

## PROPOSED EAST LYME INLAND WETLANDS REGULATION CHANGE

JUNE 8, 2020

### CURRENT:

"Regulated activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging storm water on the land within 100 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

### PROPOSED:

"Regulated activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging storm water on the land within **500 feet** measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

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INLAND WETLANDS AND WATERCOURSES  
REGULATIONS

TOWN OF EAST LYME CONNECTICUT



Approved October 6, 2008  
Revised through April 11, 2011

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## REVISIONS

These regulations have been revised to be consistent with all amendments to the Inland Wetlands and Watercourses Act through December 31, 2004. They contain all the changes the DEP has made to the model as noted in their Legislation and Regulations Advisories up to and including their 2004 Legislation and Regulations Advisory dated November 29, 2004.

Items which have been revised are underlined. Specifically, revisions to the "Rev. March 1997" Model include the following:

### Section 2.1

- Bog- definition amended
- Designated Agent- definition deleted
- Discharge- definition amended
- Disturb the natural and indigenous character of the wetland or watercourse- definition deleted
- Essential to the farming operation- definition amended to remove the word "existing"
- Farming- definition amended, reference to Appendix A
- License- new definition to reflect statutory definition
- Marshes- definition amended
- Material- definition amended to reflect statutory definition
- Nurseries- definition amended
- Permit- definition deleted, reference to License
- Person- definition amended to reflect statutory definition
- Regulated Activity- definition has a reference to Appendix B
- Regulated Area- definition deleted
- Remove- definition amended to reflect statutory definition
- Significant impact- definition amended
- Swamps- definition amended
- Wetlands- definition amended to reflect statutory definition

### Section 3

- Title amended to read "Inventory of Wetlands and Watercourses"

### Section 3.1

- Regulated area changed to wetlands and watercourses

### Section 3.2

- Amended to allow any person rather than any owner to propose map amendments

### Section 3.3

- Amended so reference to any person is now in section 3.2
- Amended to delete reference to designated agent

### Section 3.4

- New section applies to all map amendments

Section 4.1a

-Amended to reflect statutory language

Section 4.1b

-Amended to reflect statutory language

Section 4.1c

-Amended to reflect statutory language

Section 4.1d

-Amended to reflect statutory language

Section 4.1e

-Amended to reflect statutory language

Section 4.2

-Amended to reflect statutory language

Section 4.2 a

-Amended to reflect statutory language

Section 4.2 b

-Amended to reflect statutory language

Section 4.3

-Amended to add authority of duly authorized agent

Section 4.4

-Amended to reflect statutory authority

Section 5

-Amended to make clear the program areas that are regulated exclusively by the Commissioner of Environmental Protection, title of section amended.

Section 5.1

-Deleted and replaced with language of previous section 5.2

Section 5.2

-Deleted and replaced with language of previous section 5.3

Section 5.3

-Deleted and replaced with language of previous section 5.4

Section 5.4

-Deleted and replaced with language of previous section 5.1f

Section 7.5a

-Amended for clarification

Section 7.5f

-Amended to include statutory language

Section 7.5j

-Amended for clarification

Section 7.6

-Amended for clarification

Section 7.6e

-Amended to include statutory language

Section 8.1

-Amended to reflect amendments to the Act

Section 8.2

-Deleted to reflect amendments to the Act

Section 8.3

-Renumbered to section 8.2

-Amended to reflect amendments to the Act

Section 8.4

-Renumbered to section 8.3

Section 8.5

-Amended to reflect amendments to the Act

-Renumbered to section 8.4

Section 8.6

-Renumbered to section 8.5

Section 8.7

-Renumbered to section 8.6

Section 8.8

-Renumbered to section 8.7

Section 9.1

-Amended to reflect amendments to the Act

Section 9.3

-Deleted as not required by the Act

Section 9.4

-Deleted as not required by the Act

Section 10.1b

-Deleted as not allowed unless application is subject to a public hearing

Section 10.1c

-Renumbered to section 10.1b

Section 10.1d

-Renumbered to section 10.1c

Section 10.1e

-Renumbered to section 10.1d

-New section 10.1e added to address applications subject to public hearing

Section 10.5

-Deleted and replaced with new language to reflect amendments to the Act

Section 10.6

-New section added to reflect amendments to the Act

Section 10.7

-New section that contains the language of the former section 10.5

-Amended for clarification

Section 11.3

-Amended for clarification

Section 11.2

-Amended to reflect amendments to the Act

Section 12.1

-Amended for clarification

Section 13.1

-Amended to require a bond as a permit condition

Section 13.2

-Amended for clarification

Section 14.1

-Amended to delete reference to the authority to inspect property

Section 14.2

-Amended to allow inspections of permitted actions with consent of owner

Section 14.3

-New section to allow inspections of actions not permitted or expired permit

Section 14.4

- New section that contains the language of former section 14.3
- Designated agent changed to duly authorized agent
- Subsection b changed to c and limited only for action of Agency
- Subsection c deleted

Section 14.5

- New section that contains the language of former section 14.4

Section 15.7

- Amended to reflect amendments to the Act

Section 15.8

- Amended to reflect amendments to the Act

Section 19

- Various amendments to fee schedule including change to the title of the section and addition of a Complex Application Fee

Section 20 and 21

- This section, formerly titled Records Retention and Disposition, has been deleted from the model. The Office of the Public Records Administrator of the Connecticut State Library is responsible for providing record management guidelines for municipal government offices. You can contact the Connecticut State Library at (860) 757-6540 and ask for Eunice G. DiBella, the Public Records Administrator. Information is also available on their web site [www.cslib.org](http://www.cslib.org). Because of this change, section 21 of the model is renumbered to be section 20 titled "Effective Date of Regulations".

The following sections were revised to reflect the name change from the Conservation Commission to the Inland Wetlands Agency that became effective July 1, 2008. Sections 1.3, 2.1, 6.1, 8.1.

Section 9.2

- Added public notice requirement for abutters within 200'.

Section 10.1

- Changed the reference to Conservation Commission to the Commission for the Conservation of Natural Resources, the Health Officer to Ledge Light Health District and the New London County Soil and Water Conservation District to the Eastern Connecticut Conservation District.



Section 1  
Title and Authority

- 1.1 The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of these regulations to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.
- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of East Lyme."
- 1.3 The East Lyme Inland Wetland Agency (name changed from Conservation Commission effective July 1, 2008) of the Town of East Lyme was established in accordance with an ordinance adopted June 20, 1966, and shall implement the purposes and provisions of these regulations and the Ordinance Concerning Inland Wetlands and Watercourses in the Town of East Lyme.
- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of East Lyme pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

## Section 2 Definitions

### 2.1 As used in these regulations:

"Act" means the Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.

"Agency" means the Inland Wetlands Agency of the Town of East Lyme.

"Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.

"Clear-cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

"Commissioner of Environmental Protection" means the commissioner of the State of Connecticut Department of Environmental Protection.

"Continual flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.

"Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.

"Discharge" means emission of any water, substance, or material into waters of the state whether or not such substance causes pollution.

"Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.

"Farming" shall be consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes. (see Appendix A)

"Feasible" means able to be constructed or implemented consistent with sound engineering principles.

"License" means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of sections 22a-36 to 22a-45, inclusive.

"Management practice" means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use or development; construction setbacks from wetlands or watercourses; proper disposal of waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of

wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.

"Marshes" are watercourses that are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.

"Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.

"Municipality" means the Town of East Lyme.

"Nurseries" means places where plants are grown for sale, transplanting, or experimentation.

"Permit" see license

"Permittee" means the person to whom a license has been issued.

"Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

"Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

"Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging storm water on the land within **500 feet** measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect:

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
5. Any activity which causes substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
7. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

"Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.

"Swamps" are watercourses that are distinguished by the dominance of wetland trees and shrubs.

"Submerged lands" means those lands which are inundated by water on a seasonal or more frequent basis.

"Town" means the Town of East Lyme.

"Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands and watercourses of the Town.

"Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (a) evidence of scour or deposits of recent alluvium or detritus, (b) the presence of standing or flowing water for a duration longer than a particular storm incident, and (c) the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

### Section 3 Inventory of Inland Wetlands and Watercourses

- 3.1 The map of wetlands and watercourses entitled "Inland Wetlands and Watercourses Map, East Lyme, Connecticut" delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the office of the Town Clerk or the Agency. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses. The Agency may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.
- 3.2 Any person may petition the Agency for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not be limited to aerial photography, remote sensing imagery, resource mapping or other available information. The Agency may require such person to provide an accurate delineation of regulated areas in accordance with section 15 of these regulations.
- 3.3 The Agency shall maintain a current inventory of regulated areas within the town. The Agency may amend its map as more accurate information becomes available.
- 3.4 All map amendments are subject to the public hearing process outlined in section 15 of these regulations.

### Section 4 Permitted Uses as of Right & Nonregulated Uses

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
  - a. grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion

- of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;
- b. a residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987; c. boat anchorage or mooring;
  - d. uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse, or diversion or alteration of a watercourse;
  - e. Construction and operation, by water companies as defined by section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in chapter 102 of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403 of the Connecticut General Statutes and;
  - f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.
- 4.2 The following operations and uses shall be permitted, as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:
- a. conservation of soil, vegetation, water, fish, shellfish and wildlife; and
  - b. outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.
- 4.3 All activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, or grading or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Agency in accordance with section 6 of these regulations, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with section 12 of these regulations.
- 4.4 To carry out the purposes of this section, any person proposing a permitted operation and use or a nonregulated operation and use shall, prior to commencement of such operation and use, notify the Agency on a form provided by it, and provide the Agency with sufficient information to enable it

to properly determine that the proposed operation and use is a permitted or nonregulated use of a wetland or watercourse. The Agency shall rule that the proposed operation and use or portion of it is a permitted or nonregulated operation and use or that the proposed operation and use is a regulated activity and a permit is required.

#### Section 5

##### Activities Regulated Exclusively by the Commissioner of Environmental Protection

- 5.1 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of the State of Connecticut, except any local or regional board of education, pursuant to sections 22a-39 or 22a-45a of the Connecticut General Statutes.
- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Environmental Protection under sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.
- 5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under section 404 of the Federal Clean Water Act.

#### Section 6

##### Regulated Activities to be Licensed

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the East Lyme Inland Wetlands Agency of the Town of East Lyme.
- 6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law.

#### Section 7

##### Application Requirements

- 7.1 Any person intending to conduct a regulated activity or to renew or amend a permit to conduct such activity, shall apply for a permit on a form provided by the Agency. The application shall contain the information described in this section and any other information the Agency may reasonably require. Application forms may be obtained in the offices of the East Lyme Town Clerk or the Agency.
- 7.2 If an application to the Town of East Lyme Planning, Zoning, or Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with Section 8-3(g), 8-3c, or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Agency in accordance with this section, no later than the day the application is filed with such planning, zoning, or planning and zoning commission.
- 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Agency.
- 7.4 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.
- 7.5 All applications shall include the following information in writing or on maps or drawings:
- a. the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation the managing member's or responsible corporate officer's name, address, and telephone number;
  - b. the owner's name, mailing address and telephone number and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
  - c. the applicant's interest in the land;
  - d. the geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;
  - e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
  - f. alternative which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagramed on a site plan or drawing;
  - g. a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses;
  - h. names and mailing addresses of adjacent land owners;
  - i. statement by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;



- j. authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit;
- k. a completed DEP reporting form; the Agency shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Environmental Protection in accordance with section 22a-39-14 of the Regulations of Connecticut State Agencies;
- l. any other information the Agency deems necessary to the understanding of what the applicant is proposing; and
- m. Submission of the appropriate filing fee based on the fee schedule established in section 19 of these regulations.

7.6 At the discretion of the Agency or its agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following , is required:

- a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses, and other pertinent features of the land and the proposed activity, prepared by a professional engineer, land surveyor, architect or landscape architect licensed by the state, or by such other qualified person;
- b. engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;
- c. mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; the wetlands shall be delineated in the field by a soil scientist and the soil scientist's field delineation shall be depicted on the site plans;
- d. a description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed activity on these communities and wetland functions;
- e. a description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative which would cause less or no environmental impact to wetlands or watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent;
- f. analysis of chemical or physical characteristics of any fill material; and
- g. management practices and other measures designed to mitigate the impact of the proposed activity.

7.7 The applicant shall certify whether:

- a. any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
- b. traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;

- c. sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or,
  - d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- 7.8 Eleven (11) copies of all application materials shall be submitted to comprise a complete application unless an applicant is otherwise directed, in writing, by the Agency.
- 7.9 Any application to renew or amend an existing permit shall be filed with the Agency in accordance with section 8 of these regulations at least sixty-five (65) days prior to the expiration date of the permit. Any application to renew or amend such an existing permit shall contain the information required under section 7 of these regulations provided:
- a. the application may incorporate the documentation and record of the prior application;
  - b. the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit;
  - c. the application shall state the reason why the authorized activity was not initiated or completed within the time specified in the permit;
  - d. the application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or use of the land for which the permit was issued;
  - e. the Agency may, prior to the expiration of a permit, accept an untimely application to renew such permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if, in its judgment, the permit is likely to be renewed and the public interest or environment will be best served by not interrupting the activity;
- 7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided a) no permit issued during the time period from July 1, 2006 to July 1, 2009, inclusive, shall be valid for more than eleven years; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years.
- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- a. For purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.
  - b. For purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

- c. No person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application.
- d. In lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

## Section 8 Application Procedures

- 8.1 All petitions, applications, requests or appeals shall be submitted to the East Lyme Inland Wetlands Agency of the Town of East Lyme.
- 8.2 The Agency shall, in accordance with Connecticut General Statutes section 8-7d(f), notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:
  - a. any portion of the property affected by a decision of the agency is within five hundred feet of the boundary of an adjoining municipality;
  - b. a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
  - c. a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or
  - d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, appeal, request or plan.

- 8.3 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 25-32a, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed no later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency.
- 8.4 The date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of the Agency, immediately following the day of submission to the Agency or

its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner.

- 8.5 At any time during the review period, the applicant shall provide such additional information as the Agency may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in subsection 11.2 of these regulations.
- 8.6 All applications shall be open for public inspection.
- 8.7 Incomplete applications may be denied.

## Section 9 Public Hearings

- 9.1 The inland wetlands agency shall not hold a public hearing on an application unless the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses, a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the inland wetlands agency not later than fourteen days after the date of receipt of such application, or the inland wetlands agency finds that a public hearing regarding such application would be in the public interest. The inland wetlands agency may issue a permit without a public hearing provided no petition provided for in this section is filed with the inland wetlands agency on or before the fourteenth day after the date of receipt of the application. Such hearing shall be held no later than sixty-five days after the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing any person or persons may appear and be heard.
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located. In addition to notice of public hearing by publication, public notice shall be made as follows:
  - 1. Notification of adjacent property owners: Each application upon which a public hearing is held shall include a list, prepared by the applicant, of the names and addresses of all properties 200 feet or less distant therefrom, all as shown on the most recent records on file in the town of East Lyme's Tax Assessor's Office. The applicant shall mail notification of said pending application to the owners of each property as indicated on the last completed grand list as of the date such notice is mailed not more than fifteen (15) days nor less than two (2) days before the date set for the public hearing by transmitting the text of the public hearing notice as provided by the Agency. Evidence of such mailing, in the form of the US Post Office Certificates of Mailing, shall be submitted for inclusion in the record of the hearing.

## Section 10 Considerations for Decision

- 10.1 The Agency may consider the following in making its decision on an application:

- a. The application and its supporting documentation
- b. Reports from other agencies and commissions including but not limited to the Town of East Lyme:
  1. Commission for the Conservation of Natural Resources
  2. Planning, Zoning, or Planning and Zoning Commissions
  3. Building Official
  4. Director of Public Works or Town Engineer
  5. Ledge Light Health District
- c. The Agency may also consider comments on any application from the New London County Soil and Water Conservation District, the Southeastern Regional Planning Agency or other regional organizations (i.e. Council of Elected Officials); agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.
- d. Non-receipt of comments from state agencies and commissions listed in subdivision 10.1b and c above within the prescribed time shall neither delay nor prejudice the decision of the Agency.
- e. For an application for which a public hearing is held, public comments, evidence and testimony.

10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- a. the environmental impact of the proposed regulated activity on wetlands or watercourses;
- b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.
- c. the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses.
- d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
- e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
- f. impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses.

10.3 In the case of an application which received a public hearing pursuant to a finding by the Agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Agency finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding the Agency shall consider the facts and

circumstances set forth in subsection 10.2 of this section. The finding and the reasons therefore shall be stated on the record in writing.

- 10.4 In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the Agency shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity.
- 10.5 For purposes of this section, (1) "wetlands and watercourses" includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.
- 10.6 A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.
- 10.7 In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the Agency in its decision.
- 10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval.

- 10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetland agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.
- 10.10 Nothing in subsections 7.11c or 7.11d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.

## Section 11 Decision Process and Permit

- 11.1 The Agency, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources.
- 11.2 No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by agent or attorney. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of the periods specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five (65) days, or may withdraw the application. The failure of the Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the Agency shall be withdrawn by the applicant or denied by the Agency.
- 11.3 The Agency shall state upon its record the reasons and bases for its decision.

- 11.4 The Agency shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen-day period, the applicant may provide for the publication of such notice within ten days thereafter.
- 11.5 If an activity authorized by an inland wetland permit also involves an activity which requires a zoning or subdivision approval, special zoning permit, or variance or special exception, under sections 8-3(g), 8-3c, or 8-26 of the Connecticut General Statutes, the Agency shall file a copy of the decision and report on the application with the Town of East Lyme Planning, Zoning, or Planning and Zoning Commission within fifteen days of the date of the decision thereon.
- 11.6 Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 for the development of land for which an approval is required under section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 for any other activity shall be valid for not less than two years and not more than five years. Any permit issued by the Agency during the time period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval.
- 11.7 No permit issued by the Agency shall be assigned or transferred without the written permission of the Agency.
- 11.8 If a bond or insurance is required in accordance with section 13 of these regulations, the Agency may withhold issuing the permit until such bond or insurance is provided.
- 11.9 General provisions in the issuance of all permits:
- a. The Agency has relied in whole or in part on information provided by the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
  - b. All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of East Lyme, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the subject land or activity.
  - c. If the activity authorized by the Agency's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under sections 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.
  - d. In constructing the authorized activities, the permittee shall implement such management practices consistent with the terms and conditions of the permit as needed to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.
  - e. Permits are not transferable without the prior written consent of the Agency.



Section 12  
Action by Duly Authorized Agent

- 12.1 The Agency may delegate to its duly authorized agent the authority to approve or extend a license for an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Environmental Protection pursuant to section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.5 of these regulations and any other information the Agency may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 8, 9 and 11 of these regulations, such agent may approve or extend such an activity at any time.
- 12.2 Any person receiving such approval from such agent shall, within ten days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the Agency within fifteen days after the publication date of the notice and the Agency shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such Agency or its agent of such appeal. Any person may appear and be heard at the meeting held by the Agency to consider the subject appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit in accordance with Section 7 of these regulations.

Section 13  
Bond and Insurance

- 13.1 The Agency may require as a permit condition the filing of a bond with such surety in such amount and in a form approved by the Agency.
- 13.2 The bond or surety shall be conditioned on compliance with the provisions of these regulations and the terms, conditions and limitations established in the permit.

Section 14  
Enforcement

- 14.1 The Agency may appoint an agent or agents to act in its behalf with the authority to issue notices of violation or cease and desist orders and carry out other actions or investigations necessary for the enforcement of these regulations. In carrying out the purposes of this section, the Agency or its duly authorized agent shall take into consideration the criteria for decision under section 10.2 of these regulations.
- 14.2 The Agency or its agent may make regular inspections at reasonable hours of all regulated activities for which permits have been issued with the consent of the property owner or the authorized agent of the owner during the life of the permit.

- 14.3 In the case in which a permit has not been issued or a permit has expired, the Agency or its agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner.
- 14.4 If the Agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the Agency or its duly authorized agent may:
- a. issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the Agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the Agency affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to section 22a-44(b) of the Connecticut General Statutes, as amended.
  - b. issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the Agency, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the unauthorized activity, and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in section 14.3.a or other enforcement proceedings as provided by law.
- 14.5 The Agency may suspend or revoke a permit if it finds that the permittee has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking or suspending any permit, the Agency shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The Agency shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15) days of the date of its decision. The Agency shall publish notice of the suspension or revocation in a newspaper having general circulation in the municipality.

## Section 15 Amendments

- 15.1 These regulations and the Inland Wetlands and Watercourses Map for the Town of East Lyme may be amended, from time to time, by the Agency in accordance with changes in the Connecticut General Statutes or regulations of the Connecticut Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available.

- 15.2 An application filed with the Agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetland regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of such Agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.
- 15.3 These regulations and the Town of East Lyme Inland Wetlands and Watercourses Map shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments, at least thirty-five days before the public hearing on their adoption.
- 15.4 Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, East Lyme, Connecticut, shall contain at least the following information:
- a. the petitioner's name, mailing address and telephone number;
  - b. the address, or location, of the land affected by the petition;
  - c. the petitioner's interest in the land affected by the petition
  - d. map(s) showing the geographic location of the land affected by the petition and the existing and the proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations; and
  - e. the reasons for the requested action.
- 15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, East Lyme, Connecticut, shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in subsection 15.4, the petition shall include:
- a. the name, mailing address and telephone number of the owner(s) of such land and owner(s) agent or other representative;
  - b. the names and mailing addresses of the owners of abutting land;
  - c. documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and defining the boundaries of wetland soil types; and

d. map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.

15.6 Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

15.7 A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having a general circulation in the municipality where the land that is the subject of the hearing is located at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date set for the hearing. All materials including maps and documents relating to the petition shall be open for public inspection.

15.8 The agency shall hold a public hearing on a petition to amend the regulations and the Inland Wetlands and Watercourses Map within sixty-five days after receipt of such petition. The hearing shall be completed within thirty-five days after commencement. The agency shall act upon the changes requested in such petition within sixty-five days after completion of such hearing. At such hearing, any person or persons may appear and be heard and may be represented by agent or attorney. The petitioner may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition. Failure of the agency to act within any time period specified in this subsection or any extension thereof, shall not be deemed to constitute approval of the petition.

15.9 The Agency shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.

#### Section 16 Appeals

16.1 Appeal on actions of the Agency shall be made in accordance with the provisions of section 22a-43 of the Connecticut General Statutes, as amended.

16.2 Notice of such appeal shall be served upon the Agency and the Commissioner of Environmental Protection.

#### Section 17 Conflict and Severance

17.1 If there is a conflict among the provisions of these regulations, the provision which imposes the most stringent standards for the use of wetlands and watercourses shall govern. The invalidity of any word, clause, sentence, section, part, subsection, subdivision or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.

- 17.2 If there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall govern.

Section 18  
Other Permits

- 18.1 Nothing in these regulations shall obviate the requirements for the applicant to obtain any other assents, permits or licenses required by law or regulation by the Town of East Lyme, the State of Connecticut or the Government of the United States including any approval required by the Connecticut Department of Environmental Protection and the U.S. Army Corps of Engineers. Obtaining such assents, permits or licenses is the sole responsibility of the applicant.

Section 19  
Fees

- 19.1 Method of Payment. All fees required by these regulations shall be submitted to the Agency by certified check or money order payable to the Town of East Lyme at the time the application is filed with the Agency.
- 19.2 No application shall be granted or approved by the Agency unless the correct application fee is paid in full or unless a waiver has been granted by the Agency pursuant to subsection 19.7 of these regulations.
- 19.3 The application fee is not refundable.
- 19.4 Definitions. As used in this section:
- "Residential Uses" means activities carried out on property developed for permanent housing or being developed to be occupied by permanent housing.
- "Commercial uses" means activities carried out on property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.
- "Other uses" means activities other than residential uses or commercial uses.
- 19.5 Fee Schedule. Application fees shall be in accordance with Town Ordinance (refer to appendix D)
- 19.6 Exemption. Boards, commissions, councils and departments of the Town of East Lyme are exempt from all fee requirements.
- 19.7 Waiver. The applicant may petition the Agency to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this subsection. The Agency may waive all or part of the application fee if the Agency determines that:

- a. The activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or
- b. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
- c. The applicant has shown good cause.

The Agency shall state upon its record the basis for all actions under this subsection.

Section 20  
Effective Date of Regulations

20.1 These regulations are effective upon filing in the Office of the Town Clerk and publication of a notice of such filing in a newspaper having general circulation in the Town of East Lyme.

APPENDIX A

Connecticut General Statute section 1-1(q)

Except as otherwise specifically defined, the words "agriculture" and "farming" shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term "farm" includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term "aquaculture" means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.

## APPENDIX B

### Connecticut General Statute section 8-7d

Hearings and decisions. Time limits. Day of receipt. Notice to adjoining municipality. (a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for notice to persons who own or occupy land that is adjacent to the land that is the subject of the hearing. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered within sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever the approval of a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such site plan shall be rendered within sixty-five days after receipt of such site plan. Whenever a decision is to be made on an application for subdivision approval under chapter 126 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. Whenever a decision is to be made on an inland wetlands and watercourses application under chapter 440 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed sixty-five days or may withdraw such plan or application.

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office

hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.

(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning or planning and zoning commission regarding adoption or change of any zoning regulation or boundary.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(f) The zoning commission, planning commission, zoning and planning commission, zoning board of appeals or inland wetlands agency shall notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, appeal, request or plan.

## APPENDIX C

Guidelines, Upland Review Area Regulations  
Connecticut's Inland Wetlands & Watercourses Act



Appendix D - ORDINANCE ESTABLISHING SCHEDULE OF FEES FOR CONSERVATION,  
PLANNING AND ZONING COMMISSIONS

1.1	Application Fee **	
1.1.1	Residential Uses .....	\$150.00 Plus *\$50.00/LOT
	Plus Fee from Schedule A	
1.1.2	Commercial Uses .....	\$400.00
	Plus Fee from Schedule A	
1.1.3	All Other Uses.....	\$200.00
	Plus Fee from Schedule A	
	*Each lot with regulated activities	
	**\$30 fee required by C.G.S 22a-27j will be added to the base fees.	
1.2	Approval by Duly Authorized Agent ** .....	\$100.00
1.3	Appeal of Duly Authorized Agent Decision.....	\$300.00
1.4	Significant Activity Fee .....	\$300.00
1.5	Public Hearing Fee	
1.5.1	Single Residential .....	\$200.00
1.5.2	Commercial/Industrial/Multi-Family.....	\$450.00
1.6	Complex Application Fee .....	Actual Cost
	The Inland Wetlands Agency may charge an additional fee sufficient to cover the cost of reviewing and acting on complex applications. Such fee may include, but not be limited to, the cost of retaining experts, to advise, analyze, review, and report on issues requiring such experts. The Agency or the duly authorized agent shall estimate the complex application fee, which shall be paid pursuant to section 19.1 of these regulations within 10 days of the applicant's receipt or notice of such estimate. Any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than 30 days after publication of the agency's decision.	
1.7	Permitted and Nonregulated Uses :	
1.7.1	Permitted Uses as of Right .....	\$0.00
1.7.2	Nonregulated .....	\$0.00
1.8	Regulation Amendment Petitions.....	\$500.00 (Does not include Notices or Regulation Advisories from DEP)
1.8.1	Map Amendment Petitions .....	\$500.00
	Plus Fee from Schedule B	
1.9	Modification of Previous Approval: .....	\$100.00
1.10	Renewal of Previous Approval .....	\$100.00
1.11	Monitoring Compliance Fee .....	\$100.00
1.12	SCHEDULE A. For the purpose of calculating the permit application fee, the area in schedule A is the total area of wetlands and watercourses and the upland review area upon which a regulated activity is proposed.	
	SQUARE FEET of AREA	
1.12.1.	Less than 1,000 .....	\$0.00

1.12.2.	1,000	to	5,000	.....	\$250.00
1.12.3.			More	than	5,000
				.....	\$750.00

1.13 SCHEDULE B. For the purpose of calculating the map amendment petition fee, linear feet in schedule B is the total length of wetlands and watercourses boundary subject to the proposed boundary change.

LINEAR FEET

1.13.1.	Less than 500.....	\$0.00
1.13.2	500 to 1,000 .....	\$250.00
1.13.3	More than 1,000 .....	\$750.00

DRAFT

REVISION RECORD

Revision #	Section(s)	Description	Reason	Date of Approval
1	7.10, 11.6	Application Requirements; Considerations for Decision	Public Act 09-181	April 11, 2011
2	7.11, 10.8, 10.9, 10.10	Application Requirements; Considerations for Decision	Public Act 05-124 and Public Act 10-85	April 11, 2011

DRAFT



## Jennifer Lindo

---

**From:** Jennifer Lindo  
**Sent:** Friday, June 05, 2020 9:24 AM  
**To:** DEEP.Municipal.Inland.Wetland.Regis@ct.gov; katie.Dykes@ct.gov; Darcy.Winther@ct.gov  
**Cc:** 'Edward B O'Connell (eboconnell@wallersmithpalmer.com)'; 'Mark S.Zamarka (MSZamarka@wallersmithpalmer.com)'; Gary Goeschel; David Schmitt; Donald Phimister (mrphi@att.net); Doreen Rhein; Gary Goeschel; Gary@uptonbass.com; Jason Deeble; Jennifer Lindo; Karen Zmitruk; Kristen Chantrell; Marc Salerno (marcsalerno@sbcglobal.net); Paul Dagle (ptd33@aol.com); Phyllis Berger (E-mail); Rosemary Ostfeld (rosemaryostfeld@gmail.com); Sandy Gignac; Sue Spang (suespang58@gmail.com); Ted Koch  
**Subject:** Amendment of East Lyme Inland Wetlands Regulations Public Hearing Notice and Referral  
**Attachments:** Pending Applications Item A East Lyme Inland-Wetlands-Regulations-as-Amended-to-2020.pdf

Good Morning Commission Dykes,

Attached to this email please find a copy of the Amendment to the East Lyme Inland Wetlands Regulations which is being mailed to you today.

Included in the attachment are copies of the referrals to surrounding municipalities, various town agencies and the town attorney. Also enclosed is the public hearing notice for July 13, 2020 at 7:00 p.m. via virtual meeting.

Please confirm receipt of the amendment and public hearing notice, within the 35 day statutory timeframe.

Thank you,  
Jennifer Lindo

*Jennifer Lindo  
Administrative Assistant, Land Use  
Town of East Lyme  
108 Pennsylvania Ave  
PO Box 519  
Niantic, CT 06357  
(860) 691-4114  
Fax: (860) 691-0351*

Town of



East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
Phone: (860) 691-4114  
Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

June 8, 2020

Katie Dykes, Commissioner  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street  
Hartford CT 06106-5127

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Commissioner Dykes,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission

Town of



East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
Phone: (860) 691-4114  
Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

June 8, 2020

Darcy Winther  
Inland Wetlands Management Program  
Land & Water Resources Division  
Bureau of Water Protection and Land Reuse  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street  
Hartford CT 06106-5127

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Commissioner Dykes,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissiner  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
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East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission

Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Mark Nickerson, First Selectman  
Town of East Lyme  
PO Box 519  
Niantic CT 06357

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Mr. Nickerson,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission



Town of



East Lyme

P.O. Drawer 519

**Department of Planning &  
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

David L Campo, CCTC  
Town Clerk  
Town of Waterford  
15 Rope Ferry Road  
Waterford, CT 06385-2886

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Mr. Campo,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, First Selectman, Town of East Lyme  
Karen Galbo, Town Clerk, East Lyme  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission

# Town of



# East Lyme

P.O. Drawer 519

**Department of Planning &  
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Katie Sandberg, CCTC  
Town Clerk  
Town of Montville  
310 Norwich New London Turnpike  
Uncasville, CT 06382

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Ms. Sandberg,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, First Selectman, East Lyme  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Linda Flugrad, Town Clerk, Salem  
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Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
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*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
Phone: (860) 691-4114  
Fax: (860) 860-691-0351

June 8, 2020

Linda Flugrad, Town Clerk  
Town of Salem  
270 Hartford Road  
Salem CT 06420

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Ms. Flugrad,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Winzer, Town Clerk, Lyme  
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East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission

Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Linda Winzer, Town Clerk  
Town of Lyme  
480 Hamburg Rd  
Lyme, CT 06371

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Ms. Winzer,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
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East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
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Town of



East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357

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Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

June 8, 2020

Vicki Urbowicz, Town clerk  
Town of Old Lyme  
52 Lyme Street  
Old Lyme CT 06371

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Ms. Urbowicz,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
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Linda Winzer, Town Clerk, Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
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East Lyme Water & Sewer Commission



# Town of



# East Lyme

**P.O. Drawer 519**

**Department of Planning &  
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Karen Galbo, Town Clerk  
Town of East Lyme  
PO Box 519  
Niantic CT 06357

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Ms. Galbo,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please provide these documents for public perusal. They are also posted on the Town's Website under the Inland Wetlands Agency 2020 Meeting Materials. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
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East Lyme Inland Wetlands Agency  
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Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Matthew Walker, Chairman  
East Lyme Zoning Commission  
Town of East Lyme  
PO Box 519  
Niantic CT 06357

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Mr. Walker,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission

Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Kirk Scott, Chairman  
East Lyme Planning Commission  
Town of East Lyme  
PO Box 519  
Niantic CT 06357

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Mr. Scott,

The East Lyme Inland Wetlands Agency seeks to amend the East Lyme Inland Wetland Regulations. Enclosed please find the public hearing notice for July 13, 2020, the narrative showing the change to the regulation Section 2, Definitions, "Regulated Activity". Also enclosed is a full set of the regulations with the proposed change.

Please review and forward any comments at your earliest convenience. If you have any further questions regarding this letter or any of the Inland Wetland Regulations, please do not hesitate to contact me at (860) 691-4105 or visit our office.

Sincerely,

Gary A. Goeschel II  
Director of Planning/  
Wetlands Enforcement Officer

CC: Katie Dykes, Commissioner, CT DEEP  
Darcy Winther, Inland Wetlands Management Program, CT DEEP  
Edward O'Connell, Esq., East Lyme Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Karen Galbo, Town Clerk, East Lyme  
David L Campo, Town Clerk, Waterford  
Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission



Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Mark Nickerson, Chairman  
East Lyme Water & Sewer Commission  
Town of East Lyme  
PO Box 519  
Niantic CT 06357

**RE: Town of East Lyme Referral – Amendment of Inland Wetland Regulations**

Dear Mr. Nickerson,

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Katie Sandberg, Town Clerk, Montville  
Linda Flugrad, Town Clerk, Salem  
Linda Winzer, Town Clerk, Lyme  
Vicki Urbowicz, Town Clerk, Old Lyme  
East Lyme Inland Wetlands Agency  
East Lyme Zoning Commission  
East Lyme Planning Commission  
East Lyme Water & Sewer Commission



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**Insertions:** 2 | **Lines:** 0 ag

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866584

TOWN OF EAST LYME  
INLAND WETLANDS AGENCY  
Notice of Public Hearing

The East Lyme Inland Wetlands Agency will hold a Public Hearing on July 13, 2020, at 7:00 p.m., via Zoom virtual meeting, (meeting instructions below) to consider the following:

1. Application of the Town of East Lyme Inland Wetland Agency for a text amendment to amend section 2.1 of the East Lyme Inland Wetland Regulations to change the Definition of a "Regulated Activity" by enlarging the distance of the boundary for a regulated activity from 100' from an inland wetlands and/or watercourse to 500'.

Join Zoom Meeting  
<https://us02web.zoom.us/j/84027080159?pwd=VFVpUFN6ZXZjaTFiQmp4bHZQNnBJUT09>

Meeting ID: 840 2708 0159, Meeting Password: 480220, Dial 1-646-558-8656

A copy of the proposed text amendment is available for public viewing on the East Lyme Website, at [eltownhall.com](http://eltownhall.com), Government, Board Commissions, Inland Wetland Agency, Inland Wetland Agency 2020 Materials, Inland Wetland Agency 2020 Materials June 8, 2020.

Copies of the Agenda and related materials are also available on the East Lyme Website for review.

<https://eltownhall.com/government/boards-commissions/inland-wetland-agency/inland-wetland-agency-2020-materials/inland-wetland-agency-2020-materials-june-8/>

Gary Goeschel, Inland Wetlands Agent

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Town of



East Lyme

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

June 8, 2020

Account #D20603

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Eugene O'Neill Drive  
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**Please publish the following notice on July 1 and July 9, 2020**

---

TOWN OF EAST LYME

**INLAND WETLANDS AGENCY**

**Notice of Public Hearing**

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<https://eltownhall.com/government/boards-commissions/inland-wetland-agency/inland-wetland-agency-2020-materials/inland-wetland-agency-2020-materials-june-8/>.

---

Gary Goeschel, Inland Wetlands Agent

July 1, 2020

Marta Hartmann, Secretary

866584

**TOWN OF EAST LYME  
INLAND WETLANDS AGENCY  
Notice of Public Hearing**

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<https://us02web.zoom.us/j/84027080159?pwd=VFVhUkFhZjZlTGp4Qm4hZ0ZOMkRlU1Q9>

Meeting ID: 840 2708 0159, Meeting Password: 480270, Dial 1-646-558-8656

A copy of the proposed text amendment is available for public viewing on the East Lyme Website, at [eitownhall.com](http://eitownhall.com), Government, Board Commissions, Inland Wetland Agency, Inland Wetland Agency 2020 Materials, Inland Wetland Agency 2020 Materials June 8, 2020.

Copies of the Agenda and related materials are also available on the East Lyme Website for review.

<https://eitownhall.com/government/boards-commissions/inland-wetland-agency/inland-wetland-agency-2020-materials/inland-wetland-agency-2020-materials-june-8/>

Gary Goeschel, Inland Wetlands Agent

July 9, 2020

Public Notices

Public Notices

Public Notices

866584

**TOWN OF EAST LYME  
INLAND WETLANDS AGENCY  
Notice of Public Hearing**

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Gary Goeschel, Inland Wetlands Agent

860936

General Help

8  
F  
A  
M  
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M  
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## Jennifer Lindo

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**From:** Winther, Darcy <Darcy.Winther@ct.gov> on behalf of DEEP  
MunicipalInlandWetlandRegs <DEEP.Municipal.Inland.Wetland.Reg@ct.gov>  
**Sent:** Friday, June 05, 2020 11:45 AM  
**To:** Jennifer Lindo  
**Cc:** 'Edward B O'Connell (eboconnell@wallersmithpalmer.com)'; 'Mark S.Zamarka (MSZamarka@wallersmithpalmer.com)'; Gary Goeschel; 'David Schmitt'; 'Donald Phimister (mrphi@att.net)'; 'Doreen Rhein'; 'Gary@uptonbass.com'; 'Jason Deeble'; Karen Zmitruk; 'Kristen Chantrell'; 'Marc Salerno (marcsalerno@sbcglobal.net)'; 'Paul Dagle (ptd33@aol.com)'; 'Phyllis Berger (E-mail)'; 'Rosemary Ostfeld (rosemaryostfeld@gmail.com)'; 'Sandy Gignac'; 'Sue Spang (suespang58@gmail.com)'; 'Ted Koch'  
**Subject:** RECEIVED: 2020, Town of East Lyme, Proposed Reg Amendment to Upland Review Area Public Hearing Notice and Referral  
**Importance:** Low

Pursuant to CGS section 22a-42a(b), the Connecticut Department of Energy and Environmental Protection (DEEP), Inland Wetlands Management Program (IWMP), is in receipt of your proposed amendment to the Inland Wetlands and Watercourses Regulations of the Town of East Lyme, and a copy of the related public hearing notice, as attached to your email dated June 5, 2020.

To ensure the proposed amendment conforms to the Connecticut Inland Wetlands and Watercourses Act and accomplish your objectives, the IWMP strongly suggests consultation with your town attorney. The IWMP has prepared guidance and assembled information to assist you with the regulation amendment process. These materials can be found on the IWMP's [Legislation, Regulation & Case Law](#) web page. The IWMP does not provide a review of your entire set of regulations, however, staff are available to answer questions or discuss concerns you may have regarding specific amendments. Please feel free to contact the IWMP at (860) 424-3019.

Lastly, pursuant to CGS section 22a-42a(b), please provide the DEEP with a copy of the final regulations as adopted by the municipal inland wetlands agency no later than ten days after such adoption. Please submit proposed and adopted regulations through [DEEP.Municipal.Inland.Wetland.Reg@ct.gov](mailto:DEEP.Municipal.Inland.Wetland.Reg@ct.gov). See the IWMP's [Legislation, Regulation & Case Law](#) web page for additional information.

Thank you for your cooperation.

*Darcy Winther*

Inland Wetlands Management Program  
Land and Water Resources Division  
Bureau of Water Protection and Land Reuse  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3063 | F: 860.424.4054 | E: [darcy.winther@ct.gov](mailto:darcy.winther@ct.gov)  
[www.ct.gov/deep/inlandwetlands](http://www.ct.gov/deep/inlandwetlands)



---

**MEMORANDUM**

---

**TO:** EAST LYME INLAND WETLAND AGENCY (IWA)

**FROM:** EAST LYME COMMISSION FOR THE CONSERVATION OF NATURAL RESOURCES (CCNR)

**SUBJECT:** PROPOSED UPLAND REVIEW AREA REVISION

**DATE:** JUNE 4, 2020

**CC:** ROSEANN HARDY

---

The CCNR supports the IWA proposal to extend the existing Upland Review Area from the existing 100 feet. We recommend that the Review Area be extended to at least 300 feet to facilitate expert and nonpartisan review by the IWA of development projects that have the potential to degrade town wetlands, surface water bodies, or underground drinking water aquifers. Expanding the Review Area to this size is similar to actions taken by many other Connecticut towns. More importantly, it acknowledges through regulation that protecting the town's waterbodies is a prudent step saving future town maintenance costs and is environmentally protective.

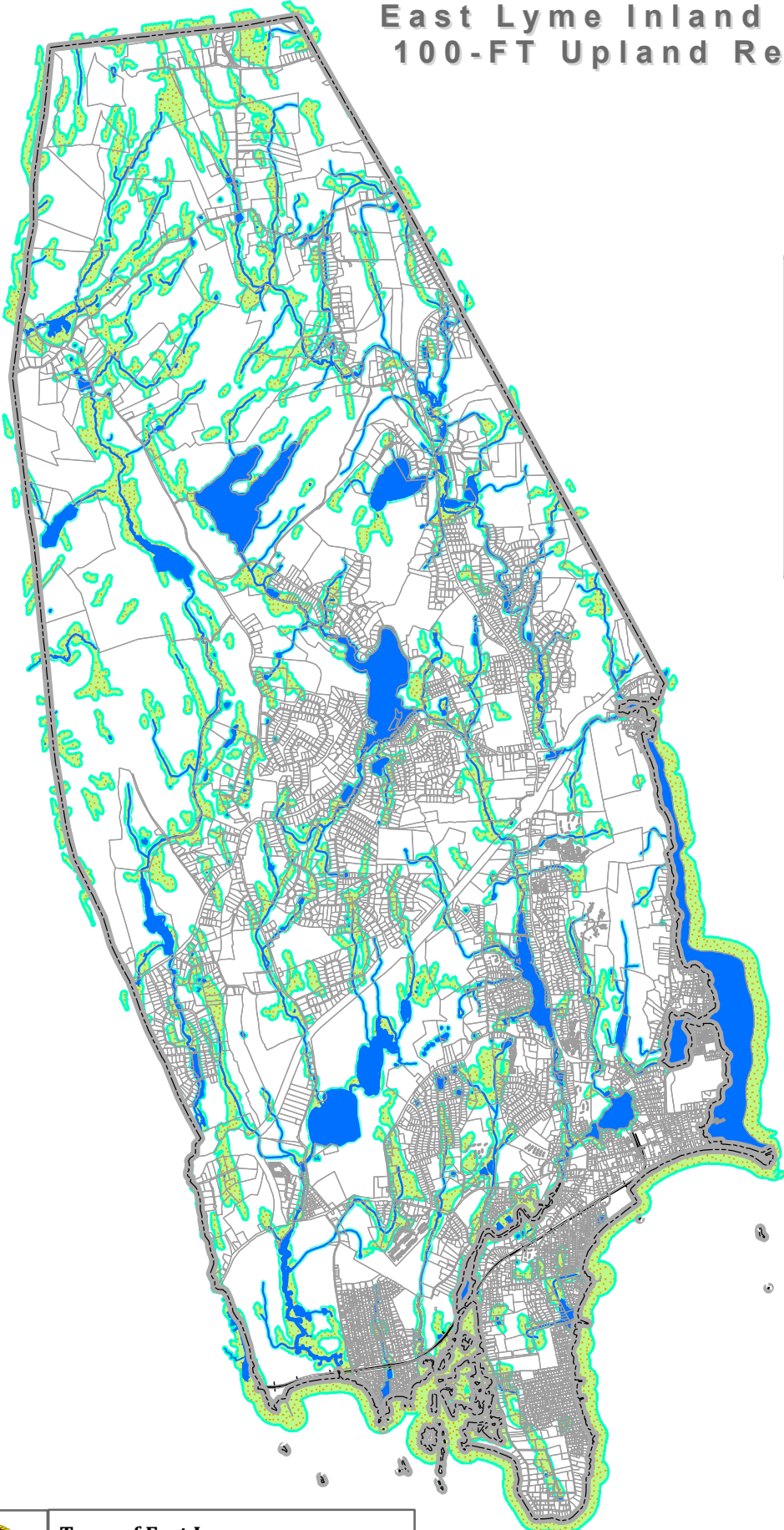
As stated in the CCNR report *Protecting Drinking Water in East Lyme*, which documents threats to town waterbodies, stormwater runoff is a common but preventable source of contamination to all surface and underground water sources. The IWA Upland Review Area should be extended to approximate the distance where runoff from major landscape disturbance will affect the health of any adjacent wetland or watercourse.

Discussed and approved unanimously by the CCNR.

Arthur Carlson, Chairman



# East Lyme Inland Wetlands Agency 100-FT Upland Review Area (URA)

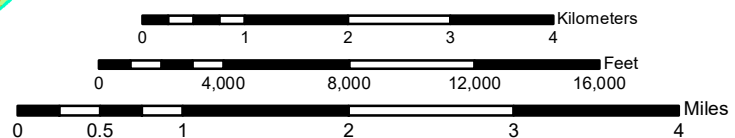


**Legend**

- Town Boundary
- Parcels
- Streams
- Waterbodies
- Wetlands
- 100FT URA

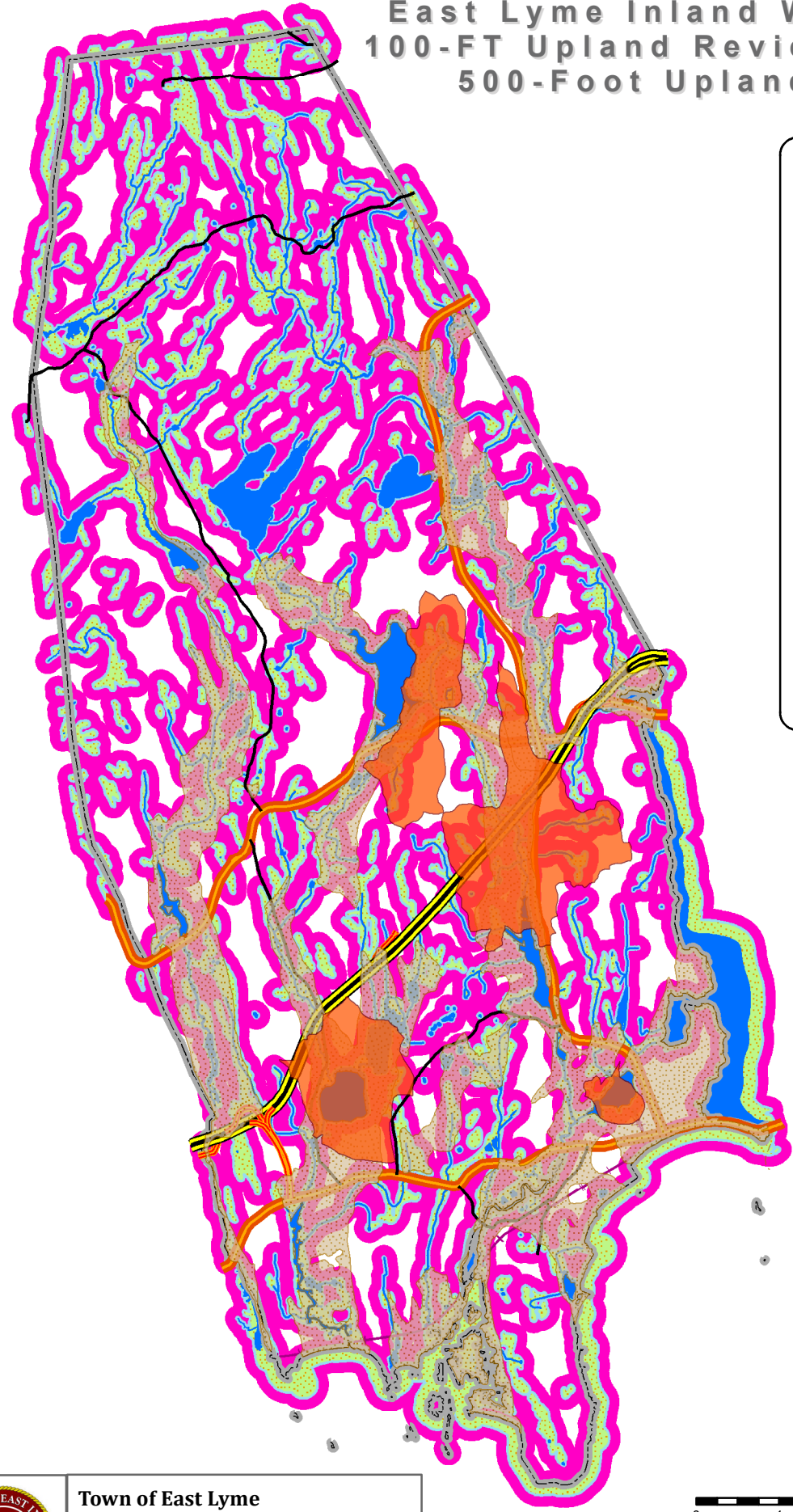


**Scale**



**Town of East Lyme**  
**Department of Planning &**  
**Inland Wetlands**  
**Date: July 2020**

# East Lyme Inland Wetlands Agency 100-FT Upland Review Area (URA) VS 500-Foot Upland Review Area

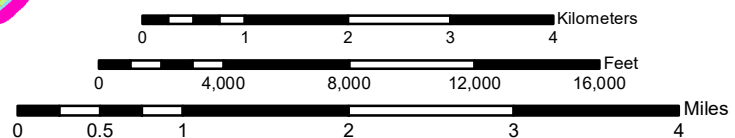


### Legend

- Aquifer Protection Area
- Stratified Drift Aquifer
- Limited Access
- Interchange
- State Route
- Collector
- Town Boundary
- Streams
- Waterbodies
- Wetlands
- 100FT URA
- 500-FT URA



**Scale**



**Town of East Lyme**  
 Department of Planning &  
 Inland Wetlands  
 Date: July 2020



## Gary Goeschel

---

**From:** Pade, Neil <NPade@TownofCantonCT.org>  
**Sent:** Monday, June 29, 2020 9:57 AM  
**To:** Gary Goeschel  
**Subject:** RE: Upland Review Areas

Hi Gary –

100' in Canton.

When I was in Vernon there was a project that identified a couple of water resources as warranting additional protections and those were set at 200' while the rest were set at 100'. That was over a decade ago now, I'm not sure if they are still in place.

Thanks,

Neil S. Pade AICP  
Director of Planning and Community Development  
Town of Canton, Connecticut  
4 Market Street  
PO Box 168  
Collinsville, CT 06022-0168  
860-693-7891 Phone  
860-693-7884 Fax  
[npade@townofcantonct.org](mailto:npade@townofcantonct.org)  
[www.townofcantonct.org](http://www.townofcantonct.org)

---

**From:** Connecticut Planning Professionals [mailto:CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU] **On Behalf Of** Gary Goeschel  
**Sent:** Wednesday, June 24, 2020 3:26 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Upland Review Areas

**CAUTION:** This email came from outside the organization. Do not click links or open attachments if you are unsure the message is safe.

---

\*Message sent from a system outside of UConn.\*

Hello All,

The Town of East Lyme is in the process of reviewing a proposed regulation change to their Inland Wetland & Watercourses Regulations which contemplates a **500-foot Upland Review Area**. I'm looking to see if there are any Towns in CT with Upland Review Areas greater than 100-feet and if so, what was the rationale (if any) behind increasing it.

I thank you all in advance,

Best,  
Gary Goeschel

**Gary A. Goeschel II**  
**Director of Planning / Inland Wetlands Agent**  
**Town of East Lyme**  
**PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357**  
**Office 860-691-4105 | Fax 860-691-0351**  
[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)

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<http://s.uconn.edu/ctplanner>.

## Gary Goeschel

---

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Renata Bertotti <0000016e4a7e59cc-dmarc-request@LISTSERV.UCONN.EDU>  
**Sent:** Wednesday, June 24, 2020 4:02 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Re: Clarification on 8-30j Affordable Housing Plan Deadline

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Thank you!

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> **On Behalf Of** Melissa Kaplan-Macey  
**Sent:** Wednesday, June 24, 2020 3:03 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Clarification on 8-30j Affordable Housing Plan Deadline

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\*Message sent from a system outside of UConn.\*

Hi all-

Apologies for the confusion/incorrect information. Mike Santoro at DOH has re-clarified that the first affordable housing plans to comply with 8-30j are due July 24, 2022.

Best, Melissa



**Melissa Kaplan-Macey, AICP**

Vice President, State Programs & Connecticut Director  
Regional Plan Association  
2 Landmark Square, Suite 108, Stamford, CT 06901  
[melissa@rpa.org](mailto:melissa@rpa.org) | 212.253.6502



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## Gary Goeschel

---

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Aimee Pardee <apardee@TOWNOFREDDINGCT.ORG>  
**Sent:** Wednesday, June 24, 2020 3:48 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Re: Upland Review Areas

\*Message sent from a system outside of UConn.\*

Redding regulates within 500' of the high water line of vernal pools.

Aimee Pardee, M.A.  
Land Use Director  
Zoning/Conservation Official  
Town of Redding  
100 Hill Road  
Redding, CT 06875  
(203) 938-8517  
[apardee@townofreddingct.org](mailto:apardee@townofreddingct.org)

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## Gary Goeschel

---

**From:** Richard P. Roberts <ROBERTS@halloransage.com>  
**Sent:** Wednesday, June 24, 2020 3:46 PM  
**To:** Gary Goeschel  
**Subject:** RE: Upland Review Areas

At one point Burlington had 600' because of the steep terrain etc., but I think DEEP told them that was too much. Maybe I am misremembering.



Richard Roberts, Esq.  
Halloran & Sage LLP  
One Goodwin Square, 225 Asylum Street  
Hartford, CT 06103-4303

E roberts@halloransage.com  
D 860.297.4695  
F 860.548.0006

[www.halloransage.com](http://www.halloransage.com)

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**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> **On Behalf Of** Gary Goeschel  
**Sent:** Wednesday, June 24, 2020 3:26 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Upland Review Areas

\*Message sent from a system outside of UConn.\*

Hello All,

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**Gary A. Goeschel II**  
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**Town of East Lyme**  
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**Office 860-691-4105 | Fax 860-691-0351**  
[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)

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## Gary Goeschel

---

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Voelker, William <wvoelker@CHESHIRECT.ORG>  
**Sent:** Wednesday, June 24, 2020 3:44 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Re: Upland Review Areas

\*Message sent from a system outside of UConn.\*

We're at 50 feet in Cheshire. Good luck with the future litigation!

William S. Voelker, AICP  
Town Planner/Development Coordinator  
Town of Cheshire  
wvoelker@cheshirect.org  
203 271-6670

---

**From:** Connecticut Planning Professionals [mailto:CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU] **On Behalf Of** Gary Goeschel  
**Sent:** Wednesday, June 24, 2020 3:26 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Upland Review Areas

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Town of East Lyme  
PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357  
Office 860-691-4105 | Fax 860-691-0351  
[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)

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## Gary Goeschel

---

**From:** Martha Fraenkel <mfraenkel@gmail.com>  
**Sent:** Wednesday, June 24, 2020 3:39 PM  
**To:** Gary Goeschel  
**Subject:** Re: Upland Review Areas

Gary, i was the zeo/weo in Brooklyn CT until a year ago, where the upland review area was/is greater than 100 ft.  
martha fraenkel

On 6/24/2020 3:26 PM, Gary Goeschel wrote:

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**Director of Planning / Inland Wetlands Agent**  
**Town of East Lyme**  
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## Gary Goeschel

---

**From:** David Lavallee <lavalleed@southington.org>  
**Sent:** Wednesday, June 24, 2020 3:38 PM  
**To:** Connecticut Planning Professionals; Gary Goeschel  
**Subject:** Re: Upland Review Areas

Southington has 200' for vernal pools

Sent from my iPhone

On Jun 24, 2020, at 3:26 PM, Gary Goeschel <ggoeschel@ELTOWNHALL.COM> wrote:

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Hello All,

The Town of East Lyme is in the process of reviewing a proposed regulation change to their Inland Wetland & Watercourses Regulations which contemplates a **500-foot Upland Review Area**. I'm looking to see if there are any Towns in CT with Upland Review Areas greater than 100-feet and if so, what was the rationale (if any) behind increasing it.

I thank you all in advance,

Best,  
Gary Goeschel

**Gary A. Goeschel II**  
**Director of Planning / Inland Wetlands Agent**  
**Town of East Lyme**  
**PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357**  
**Office 860-691-4105 | Fax 860-691-0351**  
[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)

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## Gary Goeschel

---

**From:** Lisa Houlihan <LHoulihan@ELLINGTON-CT.GOV>  
**Sent:** Wednesday, June 24, 2020 3:33 PM  
**To:** Gary Goeschel  
**Subject:** RE: Upland Review Areas

Dear Gary,

Ellington has a 250' URA for properties with the Shenipsit Watershed, otherwise it's 100'.

Best regards,

*Lisa*

Lisa M. Houlihan, AICP  
Ellington Town Planner  
PO Box 187 / 55 Main Street/ Ellington, CT 06029  
Phone: 860-870-3120 / Fax: 860-870-3122  
Website: [www.ellington-ct.gov/](http://www.ellington-ct.gov/) Email: [lhoulihan@ellington-ct.gov](mailto:lhoulihan@ellington-ct.gov) /

**From:** Connecticut Planning Professionals [mailto:CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU] **On Behalf Of** Gary Goeschel  
**Sent:** Wednesday, June 24, 2020 3:26 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Upland Review Areas

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**Office 860-691-4105 | Fax 860-691-0351**  
[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)

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## Gary Goeschel

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**From:** DeCarli, Jeremy <jdecarli@easthamptonct.gov>  
**Sent:** Wednesday, June 24, 2020 3:29 PM  
**To:** Connecticut Planning Professionals; Gary Goeschel  
**Subject:** RE: Upland Review Areas

East Hampton uses a 200 foot URA in the Lake Pocotopaug Watershed, 150 foot along the CT and Salmon Rivers, and 100 feet everywhere else.

Jeremy

***Town Offices are currently closed to the Public due to the ongoing COVID-19 Pandemic. Please call or email us with regards to submission of any paperwork or site inspections.***

***Staff is available through email and phone during normal business hours. We are committed to providing the best possible service at this challenging time. Please stay safe and stay healthy.***

**Jeremy DeCarli**, AICP  
Planning & Zoning Official  
Town of East Hampton  
1 Community Drive  
East Hampton, CT 06424  
T: 860-267-7450  
E: [jdecarli@easthamptonct.gov](mailto:jdecarli@easthamptonct.gov)  
[www.easthamptonct.gov](http://www.easthamptonct.gov)

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> **On Behalf Of** Gary Goeschel  
**Sent:** Wednesday, June 24, 2020 3:26 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Upland Review Areas

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Best,  
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**Town of East Lyme**  
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## Gary Goeschel

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**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Peter Hughes <planner@MARLBOROUGHCT.NET>  
**Sent:** Wednesday, June 24, 2020 4:05 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Re: Upland Review Areas

\*Message sent from a system outside of UConn.\*

150 and 200 from eight named waterbodies includes directly attached wetlands

The issue is not the distance it is commissioner and some staff that do not understand they do not buffer the upland and they must prove a direct adverse impacts not possible

This is where applications are held hostage and impacts cost of the development much more than any other regulatory agency

---

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Aimee Pardee <apardee@TOWNOFREDDINGCT.ORG>  
**Sent:** Wednesday, June 24, 2020 3:47 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU>  
**Subject:** Re: Upland Review Areas

\*Message sent from a system outside of UConn.\*

Redding regulates within 500' of the high water line of vernal pools.

Aimee Pardee, M.A.  
Land Use Director  
Zoning/Conservation Official  
Town of Redding  
100 Hill Road  
Redding, CT 06875  
(203) 938-8517  
[apardee@townofreddingct.org](mailto:apardee@townofreddingct.org)

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## Gary Goeschel

---

**From:** Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> on behalf of Winther, Darcy <Darcy.Winther@CT.GOV>  
**Sent:** Friday, April 03, 2020 1:38 PM  
**To:** CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU  
**Subject:** Re: Wetlands Question

**Importance:** Low

\*Message sent from a system outside of UConn.\*

Good afternoon ListServ,

As DEEP's inland wetlands management program staff and coordinator of DEEP's municipal inland wetlands agency training, I hope it will be helpful if I attempt to clarify this issue.

The jurisdiction of a municipal inland wetlands agency is NOT determined by a map. Municipal inland wetlands agencies regulate *activities* likely to impact or affect inland wetlands or watercourses within their territorial limits, whether or not such inland wetlands or watercourses are depicted on a map. If the inland wetlands agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the CT Inland Wetlands and Watercourses Act (IWWA) or of the regulations of the inland wetlands agency, the agency or its duly authorized agent may conduct an enforcement action.

The IWWA was first passed in 1972. To assist newly formed municipal inland wetlands agencies, it was deemed helpful to create a wetlands map that depicted inland wetland and watercourse resources within each municipality. At the time, DEEP had the geographic and mapping capabilities to provide this information, which was based on the NRCS soil survey. Due to scale and other mapping limitations, a disclaimer was provided that small wetland or watercourse areas may not be depicted on the map and that the boundaries of such resources may not be precise.

The concept of a map carried over to the DEEP model regulations, which guided municipal inland wetlands agencies to establish a map. However, it became apparent that maps are problematic for a number of reasons: maps become outdated, there are issues associated with scale, inaccuracies in the transfer of information while creating the map, and other limitations. Recognizing this, DEEP has recommended for years, and continues to recommend, that an agency's regulations and map provide a disclaimer that the map shows the general location of inland wetlands and watercourses and that the precise location of inland wetlands and watercourses is to be determined by the actual character of the land, the distribution of wetland soil types, and the location of watercourses. I am not an attorney, but believe this follows well established case law (e.g. *Aaron v. Redding*, 1981 - "...it is the type of soil which is determinative of whether certain land is a wetland..."). Most municipal inland wetlands agencies have established permit application requirements, in regulation, that a soil scientist delineate the inland wetlands and watercourses associated with the proposed regulated activity. Further, most municipal inland wetlands agencies have a regulation that states a person may petition the agency for an amendment to the map, and that the agency *may* amend the map as more accurate information becomes available.

The IWWA is, first and foremost, an environmental conservation and protection statute. Remember, municipal inland wetlands agencies do not regulate wetlands or watercourses, they regulate *activities* likely to impact or affect such resources. When conducting an enforcement action, the burden of proving the violation (an unpermitted activity) lies with the inland wetlands agency. Unless a property owner is willing to work with the agency to remedy a potential violation, it may be difficult to accurately determine the location, boundary, or presence of inland wetlands or watercourses. In these instances, various maps and aerial photos may assist. Just because an inland wetland or

watercourse is not depicted on a map or aerial photo, does not mean one does not exist on the landscape. Again, maps and aerial photos have limitations. Landscapes are dynamic and a map or aerial photo may not depict current conditions. A municipal inland wetlands agency may need to be creative in order to accurately document a violation (e.g., look through other department files for soils information, review previous permit applications for soil scientist reports, observe from a neighboring property, etc.).

Healthy wishes,

*Darcy Winther*

Inland Wetlands Management Program  
Land and Water Resources Division  
Bureau of Water Protection and Land Reuse  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
P: 860.424.3019 | F: 860.424.4054 | E: [darcy.winther@ct.gov](mailto:darcy.winther@ct.gov)

[www.ct.gov/deep/inlandwetlands](http://www.ct.gov/deep/inlandwetlands)



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[www.ct.gov/deep](http://www.ct.gov/deep)

***Conserving, improving and protecting our natural resources and environment;  
Ensuring a clean, affordable, reliable, and sustainable energy supply.***

-----Original Message-----

From: Connecticut Planning Professionals <CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU> On Behalf Of Mary Ann Chinatti

Sent: Friday, April 3, 2020 6:37 AM

To: CT\_PLANNING\_PROFESSIONALS-L@LISTSERV.UCONN.EDU

Subject: Wetlands Question

\*Message sent from a system outside of UConn.\*

Good morning all -

First I hope all are staying safe and healthy.

Now, our Friday test:

A resident working within a channelized stream to pipe/stone the channel for residential (already built property) improvement of water issue, and the WEO and IW Commission Chair state that if the area doesn't appear on the town's IW map (which is based on DEEP mapping) then it isn't considered a wetland. How do you, as an IW Commissioner, deal

with this if your Chair tells you it's a civil issue that needs to be dealt with in superior court because it's not a wetland/watercourse if it's not on the town's IW map???

Thanks in advance!  
Mary Ann Chinatti  
Town Planner  
Town of Plainfield

-----  
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*Regulations of Connecticut State Agencies*

TITLE 22a. Environmental Protection

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*Agency*

**Department of Environmental Protection**

*Subject*

**Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection**

*Inclusive Sections*

**§§ 22a-39-1—22a-39-15**

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- Sec. 22a-39-6.2.a. When commissioner must render decision
- Sec. 22a-39-6.2.b. When commissioner must render decision after public hearing
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- Sec. 22a-39-7.2. Modification and resubmission of denied application
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- Sec. 22a-39-9.3. Appeal of order
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- Sec. 22a-39-9.5. Suspension or revocation of permits
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- Sec. 22a-39-11.2. Conformity of local regulations
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- Sec. 22a-39-11.4.a. Amendment of nonconforming regulations
- Sec. 22a-39-11.4.b. Jurisdiction where local regulations disapproved
- Sec. 22a-39-11.5.a. Where commissioner does not issue notice
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- Sec. 22a-39-13.1. Conflict with other regulations
- Sec. 22a-39-13.2. Invalidity of certain parts of regulations
- Sec. 22a-39-14. Reporting requirements for municipal inland wetland agencies
- Sec. 22a-39-15. Payments to the state for acting on inland wetlands and water-courses permit applications

**Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection**

**Sec. 22a-39-1. Title and authority**

These regulations shall be known as the “Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection.”

(Effective February 25, 1974)

**Sec. 22a-39-2. Definitions**

Definitions, as used in these regulations:

1. “The Act” means Sections 22a-36 to 45 inclusive of the General Statutes, as amended;
2. “Commissioner” means the Commissioner of the Department of Environmental Protection;
3. “Department” means the Department of Environmental Protection;
4. “Deposit” includes, but shall not be limited to fill, grade, dump, place, discharge or emit;
5. “Discharge” means the emission of any water, substance or material into waters of the State of Connecticut whether or not such substance causes pollution;
6. “License” means the whole or any part of a permit, certificate of approval or similar form of permission which may be required of any person by the provisions of these regulations or the Act;
7. “Local Inland Wetlands Agency” means the agency empowered by municipal ordinance to implement and administer the Act and having jurisdiction over the inland wetlands and water courses of such municipality;
8. “Material” means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse, or waste;
9. “Person” means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, government agencies or subdivisions thereof;
10. “Pollution” means any harmful thermal effect or the contamination or rendering unclean or impure of any wetlands or water courses of the State of Connecticut by reason of any waste or other materials discharged or deposited therein by any public or private sewer, or otherwise, so as directly or indirectly to come in contact with any wetlands or water courses;
11. “Regulated activity” means any operation within or use of a wetland or water course as listed in Section 4.2 of these regulations;
12. “Regulated Area” means any wetland or water course as defined in these regulations;
13. “Remove” includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline, or blast;
14. “Rendering unclean or impure” means any alteration of the physical, chemical or biological properties of any wetlands or water courses of the State of Connecticut, including

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§22a-39-3

*Department of Environmental Protection*

but not limited to change in color, odor, turbidity or taste;

15. "Significant impact or major effect" means:

a. Any activity involving a deposition of material which will or may have a substantial adverse effect on the regulated area or on another part of the inland wetland or water course system or

b. Any activity involving a removal of material which will or may have a substantial adverse effect on the regulated area or on another part of the inland wetland or water course system or

c. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a water course system or

d. Any activity which substantially diminishes the natural capacity of an inland wetland or water course to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, and/or provide recreation and open space;

16. "Soil Scientist" means an individual duly qualified in accordance with standards set by the United States Civil Service Commission;

17. "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any wetlands or water courses of the State of Connecticut;

18. "Water Courses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, public or private, which are contained within, flow through or border upon the State of Connecticut or any portion thereof, not regulated pursuant to Sections 22-7h to 22-7o inclusive of the General Statutes, as amended;

19. "Wetlands" means land, including submerged land, not regulated pursuant to Sections 22-7h to 22-7o inclusive of the General Statutes, as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soil Survey (as may be amended from time to time) of the U.S. Soil Conservation Service.

(Effective February 25, 1974)

**Sec. 22a-39-3. Permitted operations and uses**

**Sec. 22a-39-3.1. Uses permitted as of right**

The following operations and uses shall be permitted in inland wetlands and water courses, as of right:

a. Grazing, farming, nurseries, gardening, and harvesting of crops and farm ponds of three acres or less;

b. A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, providing the permit has been issued or the subdivision has been approved as of the effective date of promulgation of municipal regulations pursuant to the Act or in the absence thereof, as of the effective date of these regulations, whichever occurs first;

c. Boat anchorage or mooring;

d. Uses incidental for the enjoyment and maintenance of a residential property, such

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*Department of Environmental Protection*

§22a-39-4.2

property defined as the largest minimum residential lot site permitted anywhere in the municipality, provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of substantial amounts of material from or into a wetland or water course, or diversion or alteration of a water course;

e. Construction and operation, by water companies as defined in Section 16-1 of the General Statutes, or by municipal water supply systems as provided for in Chapter 102 of the General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Sections 25-110 and 25-112 of the General Statutes, as amended.

(Effective February 25, 1974)

**Sec. 22a-39-3.2. Uses permitted where indigenous character of land is not disturbed**

The following operations and uses shall be permitted, as nonregulated uses in wetlands and water courses provided they do not disturb the natural and indigenous character of the land. "Disturbing the natural and indigenous character of the land" means that the activity will significantly disturb the inland wetland or water course by reason of removal or deposition of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or water course.

a. Conservation of soil, vegetation, water, fish, shellfish and wildlife;

b. Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.

(Effective February 25, 1974)

**Sec. 22a-39-4. Licensing of regulated activities within regulated areas**

**Sec. 22a-39-4.1. Regulated activities to be licensed**

Subject to the provisions of Sections 3, 4.3 and 4.4 hereof, regulated activities affecting wetlands and water courses within the State of Connecticut are prohibited except as they may be licensed 1) by the local inland wetlands agency, or 2) after June 30, 1974 by the Commissioner in the event that no local inland wetlands agency of competent jurisdiction is in operation.

(Effective February 25, 1974)

**Sec. 22a-39-4.2. Regulated activities**

The local inland wetlands agency or the Commissioner shall regulate only those activities which:

- a. remove material from,
- b. deposit material in,

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§22a-39-4.3.a

*Department of Environmental Protection*

- c. obstruct,
- d. construct,
- e. alter, or
- f. pollute inland wetlands and water courses.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.a. Activities to be regulated solely by the commissioner**

The Commissioner shall regulate the following activities to the exclusion of the local inland wetlands agencies:

- (1) Construction or modification of any dam, pursuant to Sections 25-110 and 25-112 of the General Statutes, as amended;
- (2) Construction or placement of any obstruction within channel encroachment lines, pursuant to Sections 25-4a to g of the General Statutes, as amended;
- (3) Construction or placement of any structure or obstruction within tidal, coastal and navigable waters, pursuant to Sections 25-7b to e of the General Statutes, as amended;
- (4) Diversion of water for public and domestic use, pursuant to Sections 25-8a to e of the General Statutes, as amended;
- (5) Discharges into waters of the state, pursuant to Section 25-54i of the General Statutes, as amended.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.b. Submission and processing of applications**

Each application to undertake an activity specified in Section 4.3.a of these regulations shall be submitted to the Commissioner and processed in accordance with the statutes, regulations and procedures which are applicable to the proposed activity.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.c. Submission of application to local wetlands agency**

Except as provided in Section 4.4 of these regulations, if any application submitted pursuant to Section 4.3.b of these regulations includes a regulated activity as defined by Section 4.2 of these regulations, the Commissioner shall direct the applicant to submit such portion of the application to the appropriate local inland wetlands agency.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.d. Local agency to direct certain applicants to commissioner**

If a local inland wetlands agency receives an application to undertake an activity specified in Section 4.3.a of these regulations, the local inland wetlands agency shall in writing direct the applicant to apply to the Commissioner for the required license. The local wetlands agency may, in its discretion, review the remaining portions of the application, or may deem such application incomplete until the Commissioner issues a final decision concerning any

*Regulations of Connecticut State Agencies*

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*Department of Environmental Protection*

§22a-39-4.7

related application subject to his jurisdiction.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.e. Permits granted by commissioner to be binding on local agency**

Any permit granted or denied by the Commissioner shall be binding upon the local inland wetlands agencies as to matters within the Commissioner's jurisdiction.

(Effective February 25, 1974)

**Sec. 22a-39-4.3.f. Commissioner may consult local agency**

Upon receipt of any application to conduct an activity which will affect a wetland or water course, the Commissioner may submit a copy of the application to the local inland wetlands agency in any affected municipality for review and comment. The failure to receive a written reply shall not delay a public hearing or prejudice the final decision.

(Effective February 25, 1974)

**Sec. 22a-39-4.4. Exclusive jurisdiction of commissioner**

The Commissioner shall license and maintain exclusive jurisdiction over regulated activities as defined in Section 4.2 of these regulations to be undertaken by any department, agency or instrumentality of the State of Connecticut.

(Effective February 25, 1974)

**Sec. 22a-39-4.5. Issuance of permit by commissioner before July 1, 1974**

After the effective date of these Regulations, but before July 1, 1974, the Commissioner may issue such permits as he deems necessary to implement the purposes of the Act and of these Regulations.

(Effective February 25, 1974)

**Sec. 22a-39-4.6. Boundary maps to be established**

The local inland wetlands agency or the Commissioner shall establish or amend area boundary maps in accordance with the procedures of subsections f and g of Section 22a-39 of the General Statutes. Such maps shall be on file in the offices of the municipal clerks and at the Department, and titled "Designated Inland Wetlands and Water Courses of the . . . . . (City or town) of . . . . . (Name of Municipality)."

(Effective February 25, 1974)

**Sec. 22a-39-4.7. Disputation of designations**

Wetlands and Watercourses—Inland wetlands and water courses are defined in Sections 2 (18) and 2 (19) of these regulations.

a. If any person disputes the designation or the failure to designate any wetland or water course as a regulated area, such person may be required to produce such information as the local inland wetlands agency or the Commissioner deems necessary to permit an informed



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decision.

b. To meet the burden of proof for wetlands exemption under subsection (a), the petitioner may be directed to present documentation by a soil scientist that the wetland in question, or a portion of it, does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial, or flood plain.

(Effective February 25, 1974)

**Sec. 22a-39-5. Application procedure**

**Sec. 22a-39-5.1.a. Where applications to be submitted**

Any person wishing to carry out a regulated activity shall submit an application to the local inland wetlands agency. After June 30, 1974, if there is no such operating wetlands agency within the municipality, such person shall apply to the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-5.1.b. Complete application**

No application submitted to the Commissioner shall be deemed complete unless it shall be in such form and contain such information as the Commissioner deems necessary for a fair determination of the issues. The Commissioner shall inform all applicants of such necessary information.

(Effective February 25, 1974)

**Sec. 22a-39-5.1.c. Five copies of information required**

Written information and maps required by the Commissioner shall be furnished in no fewer than five (5) copies.

(Effective February 25, 1974)

**Sec. 22a-39-5.2. Information required on applications**

All applications to the Commissioner shall include the following information in writing on a form provided by him.

- a. The applicant's name, home and business addresses, and telephone numbers;
- b. The owner's name (if applicant is not the owner of the property), home and business addresses, telephone numbers, and written consent to the proposed activity set forth in the application;
- c. Applicant's interest in the land;
- d. The geographical location of the property which is to be affected by the proposed activity, including a description of the land in sufficient detail to allow identification of the properties on the Inland Wetlands and Water Courses Map;
- e. Purpose and description of the proposed activity;
- f. A site plan;
- g. Names of adjacent property owners;

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h. Required additional information.

(Effective February 25, 1974)

**Sec. 22a-39-5.3. Summary ruling**

If the Commissioner finds that a proposed activity is a regulated activity not involving significant impact or major effect on the inland wetland or water course as defined in Section 2 of these regulations, he may allow the activity with or without conditions or limitations. The Commissioner, after full review of the considerations set forth in Sections 6.1.d through 6.1.h and other pertinent factors, shall issue a permit with or without conditions or limitations.

(Effective February 25, 1974)

**Sec. 22a-39-5.4. Plenary rulings**

If the Commissioner finds that the activity applied for does or may involve a significant impact or major effect on a wetland or water course, he may request additional information which may include but is not limited to:

a. **Site plan**—a map of the proposed use and the property which will be affected, drawn by a licensed surveyor, professional engineer, or professional architect, registered in the State of Connecticut or in an adjoining state, or by such other person acceptable to the Commissioner. The map shall be at a scale to be determined by the Commissioner. Detailed information to be included on this site plan shall be requested by the Commissioner according to his evaluation requirements.

b. **Soil sample data**—if the parcel lies within or partly within an area containing poorly drained, very poorly drained, alluvial, and/or flood plain soils, the data shall show precisely where each specific soil type is found. Soil types identified must be consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service.

c. **Biological information**—The applicant may be required to submit 1) an evaluation of the extent of the presence of plant species commonly associated with water courses, and 2) an analysis of the probable effect of his proposed activity upon the plant and animal ecosystem.

d. **Water course characteristics**—if the proposed activity may affect a water course lying within, partly within, or flowing through or adjacent to the affected property, the applicant may be required to submit information relative to the present character and the projected impact of the proposed activity upon the water course.

e. **Analysis of material to be deposited**—the applicant may be required to describe any materials to be deposited on the affected property in terms of volume, composition, and the possibility of erosion or leaching from deposited materials. The applicant may also be required to estimate the probable environmental impact of the deposition of materials on the affected wetlands or water courses.

f. A description of the proposed construction or the erection of structures on the affected

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property, including blueprints, engineering and architectural plans or designs. Such description should include the purposes of such construction or activity.

g. A list of other property owners whose rights or interests may be affected by the proposed activity.

(Effective February 25, 1974)

**Sec. 22a-39-5.5. Public hearing may be held**

If the Commissioner finds, on the basis of the evidence before him, that a regulated activity is involved which may have significant impact or major effect on a wetland or water course, he may docket such proposal for public hearing.

(Effective February 25, 1974)

**Sec. 22a-39-5.6.e. Public hearings**

All public hearings shall commence not sooner than thirty (30) days nor later than sixty (60) days after the receipt of a complete application. Notice of the hearing shall be published at least once not more than thirty (30) days and not fewer than ten (10) days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetlands or water courses are located. All applications, maps, and documents relating to this hearing shall be open for public inspection at the Office of the Clerk of the municipality wherein the affected inland wetland or water course is located, or at the Department. Notices of hearings shall be sent to the applicant, adjacent property owners, all known interested parties and groups, and to chief executive officers of the town wherein the wetland or water course lies.

(Effective February 25, 1974)

**Sec. 22a-39-5.7.a. Review by county soil and water conservation district**

The Commissioner may submit one copy of the application to the County Soil and Water Conservation District for review. Such submission shall be made upon the receipt of a complete application, but failure to receive a written review from the Soil and Water Conservation District shall not delay a public hearing or prejudice the final decision.

(Effective February 25, 1974)

**Sec. 22a-39-5.7.b. Review by conservation commission**

The Commissioner may submit one copy of the application to the Conservation Commission of the municipality wherein the wetland is located for review. Such submission shall be made upon receipt of a complete application, but failure to receive a written reply from the Conservation Commission shall not delay a public hearing or prejudice the final decision.

(Effective February 25, 1974)

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**Sec. 22a-39-5.7.c. Review by conservation or planning commissions of adjoining municipality**

The Commissioner may submit one copy of the application to the Conservation Commission or Planning Commission in any municipality whose border lies within five hundred (500) feet of any wetland or water course that may be affected by the proposed activity. Such submission shall be made upon receipt of a complete application, but failure to receive a written reply shall not delay a public hearing or prejudice the final decision.

(Effective February 25, 1974)

**Sec. 22a-39-6. Rendering a decision**

**Sec. 22a-39-6.1. Considerations for decision**

The Commissioner shall, consistent with applicable requirements of Sections 4-166 to 185 of the General Statutes, as amended, consider the following in making his final decision on a permit application:

- a. All evidence offered at any public hearing;
- b. Any reports from other commissions and/or federal or state agencies, including the Soil and Water Conservation District and the Connecticut Department of Environmental Protection;
- c. Additional requested information;
- d. All relevant facts and circumstances, including but not limited to the following:
  - (i) The environmental impact of the proposed action, including the effects of the inland wetland's and water course's natural capacity to support desirable biological life, to prevent flooding, to supply water, to control sediment, to facilitate drainage, and to promote public health and safety.
  - (ii) The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity. This should include but is not limited to the alternative of taking no action, or postponing action pending further study; the alternative of requiring actions of different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.
  - (iii) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses future options.
  - (iv) Irreversible and irretrievable commitments of resources which would be involved in the proposed activity. This requires recognition that the inland wetlands and water courses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion or obstruction of waterflow, and by the erection of structures and other uses.

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(v) The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which would be caused or threatened. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and other beneficial aquatic organisms, wildlife and vegetation; the dangers of flooding and pollution; and destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and water courses.

(vi) The suitability of such action to the area for which it is proposed. This requires the agency to balance the need for the economic growth of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.

e. Measures which would mitigate the impact of the proposed activity and may be imposed as conditions of the permit. Such measures include the availability of further technical improvements or safeguards which could feasibly be added to the plan or action to avoid the reduction of the wetland's or water course's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space.

(Effective February 25, 1974)

**Sec. 22a-39-6.2.a. When commissioner must render decision**

In the absence of a public hearing, the Commissioner shall render a final decision within ninety (90) days from the receipt of a complete application. The Commissioner shall notify the applicant by certified mail of his decision within ten (10) days of the date of the decision and the Commissioner shall cause notice of his decision to be published in a newspaper having a general circulation in the municipality wherein the regulated area lies.

(Effective February 25, 1974)

**Sec. 22a-39-6.2.b. When commissioner must render decision after public hearing**

Action shall be taken on applications within forty-five (45) days after certification of a transcript of the public hearing. The Commissioner shall inform the applicant and any other parties of his decision in granting a permit with or without conditions, or in denying a permit, by certified mail within ten (10) days of the date of such decision.

(Effective February 25, 1974)

**Sec. 22a-39-7. The permit**

**Sec. 22a-39-7.1. Written opinion required**

At the time of granting a permit, granting a permit with conditions or limitations, or denying a permit following a public hearing, the Commissioner shall issue a written opinion presenting his reasons.

(Effective February 25, 1974)

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**Sec. 22a-39-7.2. Modification and resubmission of denied application**

The Commissioner may deny a permit with or without prejudice. If a permit is denied with prejudice, the application shall not be resubmitted for one year following the date of such denial. If a permit is denied without prejudice, the applicant may modify, amend or correct his proposal. The rejection of a modified proposal shall be equivalent to the denial of an application for the purposes of Section 10 of these regulations.

(Effective February 25, 1974)

**Sec. 22a-39-7.3. Modification of application granted with conditions**

If a permit is granted with conditions or limitations, and the applicant disputes such conditions or limitations, he may modify, amend or correct his proposal. Rejection of a modified, amended or corrected proposal shall be equivalent to the denial of an application for the purposes of Section 10 of these regulations.

(Effective February 25, 1974)

**Sec. 22a-39-7.4. Initiation of activity to be within one year**

Initiation of activity under a permit shall be within one year of the granting of the permit, unless the time period is extended by the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-7.5. Assignment of permits**

No permit may be assigned or transferred without the written consent of the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-8. Other permits and licenses**

Nothing in these regulations shall obviate any requirement for the applicant to obtain any other permit or license required by law or regulation of the Government of the United States or of the State of Connecticut or any political subdivision is solely the responsibility of the applicant.

(Effective February 25, 1974)

**Sec. 22a-39-9. Enforcement**

**Sec. 22a-39-9.1. Entrance onto private property**

In the performance of his duties under the Act, and under Section 22a-5 (d) of the General Statutes, the Commissioner or his designated agent pursuant to Section 22a-6 (d), may enter at all reasonable times upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of these regulations.

(Effective February 25, 1974)

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**Sec. 22a-39-9.2. Issuance of orders**

If the Commissioner finds that any person is maintaining any facility or condition which reasonably can be expected to impair, alter or destroy the wetlands and water courses of the State or which is creating or reasonably can be expected to create a source of pollution to the wetlands and water courses of the State, he may issue an order to such person maintaining such facility or condition to take the necessary steps to correct such facility or condition.

(Effective February 25, 1974)

**Sec. 22a-39-9.3. Appeal of order**

Each order issued pursuant to Section 9.2 shall be sent by certified mail, return receipt requested, to the subject of such order and shall be deemed issued upon deposit in the mail. Any person aggrieved by any such order may, within thirty (30) days from the date such order is sent, request a hearing before the Commissioner. After such hearing the Commissioner shall consider the facts presented to him and shall revise and resubmit the order to the person or inform the person that the previous order has been affirmed. All such orders and hearings shall be issued and held in conformance with Sections 4-166 to 185 of the General Statutes, as amended, and with The Rules of Practice of the Dept. of Environmental Protection adopted pursuant to § 2 (a) of the P.A. 854 of 1971, as amended. The request for a hearing as provided for in this section shall be a condition precedent to the taking of an appeal under the provisions of Section 10 of these regulations. The Commissioner may, after the hearing provided for in this section, or at any time after the issuance of his order, modify such order by agreement or extend the time schedule therefor if he deems such modification or extension to be advisable or necessary. Any modification or extension shall be deemed to be a revision of an existing order and shall not constitute a new order.

(Effective February 25, 1974)

**Sec. 22a-39-9.4. Penalties for violation of regulations**

Any person who commits, takes part in, or assists in any violation of any provision of these regulations shall be subject to the penalties provided in Section 22a-44 of the General Statutes, and to such other penalties as the law may provide. If the Commissioner determines that any person is engaging in any regulated activity without a proper permit, or is exceeding the conditions or limitations placed on his permit or the scope of work as set forth in the application, or has obtained a permit through deception or through inaccurate information as to either the activity or its environmental impact, or has engaged or is engaging in any other violation of these regulations or the Act, the Commissioner may:

- a. Issue a cease and desist order to such person, pursuant to Section 22a-7 of the General Statutes, as amended, directing him to halt any and all regulated activities or other violations;
- b. Revoke or suspend any permit whose conditions or limitations have been exceeded, or which was secured through deception or through inaccurate information as to either the

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scope of its activity or its environmental impact;

c. Bring an action pursuant to Section 22a-44 of the General Statutes, as amended; or

d. Bring an action pursuant to Public Act No. 73-665 or any regulations promulgated thereunder.

(Effective February 25, 1974)

**Sec. 22a-39-9.5. Suspension or revocation of permits**

In the event that the Commissioner shall suspend or revoke a permit pursuant to Section 9.4.b above, the applicant shall be notified of the Commissioner's decision by certified mail within five (5) days of the date of the decision and the Commissioner shall cause notice of his order in revocation or suspension of a permit to be published in a newspaper having general circulation in the municipality wherein the wetland or water course lies. Before such suspension or revocation may take effect, the Commissioner shall afford the applicant opportunity to show compliance with all lawful requirements for retention of the permit. However, if the Commissioner finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his order, he may order summary suspension of a license pending proceedings for revocation or other action.

(Effective February 25, 1974)

**Sec. 22a-39-9.6. Monies to be maintained in separate account**

All monies collected pursuant to this section shall be maintained in a separate account and shall be used by the Commissioner to restore the affected wetlands or water courses to their condition prior to violation, wherever possible.

(Effective February 25, 1974)

**Sec. 22a-39-9.7. Introduction of evidence**

All parties may, subject to the ruling of the Commissioner, request summonses and examinations of witnesses; cross-examine witnesses; introduce records, papers, documents, or other evidence into the record; and submit oral arguments and file briefs for the purpose of showing compliance with requirements for retention of a permit and for the purpose of showing the absence of any violation.

(Effective February 25, 1974)

**Sec. 22a-39-9.8. Other remedies not excluded**

Nothing in these regulations shall be taken as limiting or excluding such other remedies as are available to the Commissioner for the protection of wetlands and water courses.

(Effective February 25, 1974)

**Sec. 22a-39-10. Appeals**

Any person aggrieved by any regulation, order, decision or action made by the Commissioner pursuant to these regulations and/or the General Statutes of Connecticut may



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appeal to the court of common pleas in and for the county where the land affected is located within fifteen (15) days after publication of such regulation, order, decision, or action. All appeals shall follow the procedure outlined in Section 22a-43 of the General Statutes, as amended.

(Effective February 25, 1974)

**Sec. 22a-39-11. Conformity of local wetlands agency regulations**

**Sec. 22a-39-11.1. Submission of local regulations to commissioner**

All regulations, including regulated area boundary maps, promulgated or amended by local wetlands agencies, pursuant to the Act, shall be submitted to the Commissioner not later than ten (10) days after their adoption.

(Effective February 25, 1974)

**Sec. 22a-39-11.2. Conformity of local regulations**

The Commissioner shall examine such regulations, including maps and amendments, to determine their conformity with the Act and with these regulations in terms of a) procedural safeguards, b) completeness of wetland and water course coverage, c) adequacy of enforcement machinery and information gathering procedures, and d) substantial adherence to the policies and goals of the Act.

(Effective February 25, 1974)

**Sec. 22a-39-11.3. Notice of nonconformance**

In the event that the Commissioner shall find any part of such local inland wetlands agency regulation not in conformity, the Commissioner shall issue a notice of nonconformance which shall include:

- a. the reasons for holding any part to be nonconforming;
- b. the section or sections whose operation and effect shall be suspended until they shall be amended and resubmitted;
- c. the extent to which the Commissioner shall exercise jurisdiction over the municipal wetlands and water courses, for their protection, in the interval between the issuance of a notice of nonconformance and the resubmission of amended regulations, including boundary maps.

(Effective February 25, 1974)

**Sec. 22a-39-11.4.a. Amendment of nonconforming regulations**

The local wetlands agency shall, pursuant to the provisions for adopting and amending regulations contained in the Act, initiate proceedings to amend such nonconforming regulations within twenty (20) days of the receipt of a notice of non-conformance.

(Effective February 25, 1974)

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**Sec. 22a-39-11.4.b. Jurisdiction where local regulations disapproved**

Upon disapproval of any municipal regulations, the Commissioner shall assume jurisdiction over those portions of such municipality's regulations as may be necessary to assure continuity of wetland and water course regulation in such municipality. This jurisdiction shall cease upon approval of the municipality's regulations by the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-11.5.a. Where commissioner does not issue notice**

Failure of the Commissioner to issue a notice of nonconformance within sixty (60) days of the receipt of such regulations, maps, or amendments shall be taken as approval of such regulations, except as provided in Section 11.5.b of these regulations.

(Effective February 25, 1974)

**Sec. 22a-39-11.5.b. Final written approval**

If municipal regulations were not submitted to and granted approval by the Commissioner in a preliminary form prior to adoption, they shall not become effective until granted final written approval by the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-11.6. Local regulations approved before effective date of these regulations**

All municipal maps and regulations approved by the Commissioner before the effective date of these regulations shall be deemed sufficient to satisfy the requirements of the Act and these regulations. Such regulations shall be deemed fully operative as of their effective date.

(Effective February 25, 1974)

**Sec. 22a-39-11.7. Jurisdiction of municipality**

After July 1, 1974, any municipality which designates a local wetlands agency and adopts regulations shall, upon approval of such regulations by the Commissioner, exercise jurisdiction over regulated activities.

(Effective February 25, 1974)

**Sec. 22a-39-11.8. Reports to commissioner**

All enforcement activities undertaken by a municipality and all appeals involving a municipality which pertain to the wetlands and water courses of the State shall be reported, on a form supplied by the Commissioner, to the Commissioner within fifteen (15) days of the commencement of such action.

(Effective February 25, 1974)

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**Sec. 22a-39-12. Bond and insurance**

**Sec. 22a-39-12.1. Bond may be required**

The applicant, upon approval of the license, and at the discretion of the Commissioner, may be required to file a performance bond or other adequate security in an amount and with sureties and in a form approved by the Commissioner.

(Effective February 25, 1974)

**Sec. 22a-39-12.2. Condition for bond**

The bond and sureties shall be conditioned on substantial compliance with all provisions of these regulations and conditions imposed on license approval.

(Effective February 25, 1974)

**Sec. 22a-39-12.3. Public insurance**

The applicant may be directed to certify that he has public insurance against liability which might result from the proposed operation or use covering any and all damages which might occur within three (3) years of completion of such operations, in an amount to be determined by the Commissioner commensurate with the projected operation.

(Effective February 25, 1974)

**Sec. 22a-39-13. Conflict and severance**

**Sec. 22a-39-13.1. Conflict with other regulations**

Where there is a conflict between the provisions of these regulations and those of any other regulation administered by the Department, the provisions of the regulation which imposes the most stringent standards for the use of the wetland or water course shall govern.

(Effective February 25, 1974)

**Sec. 22a-39-13.2. Invalidity of certain parts of regulations**

The invalidity of any word, clause, sentence, section, part or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.

(Effective February 25, 1974)

**Sec. 22a-39-14. Reporting requirements for municipal inland wetland agencies**

(a) Each inland wetland and watercourses agency established pursuant to section 22a-42 of the General Statutes, as amended, shall report the following actions to the Commissioner on a form provided by the Department:

- (1) permits issued;
- (2) permits denied;
- (3) enforcement notices and orders;
- (4) map amendments; and

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- (5) jurisdictional rulings.
- (b) The information reported to the Commissioner shall include, but is not limited to:
  - (1) name of the town and reporting agency;
  - (2) reporting period;
  - (3) action category;
  - (4) date action was taken;
  - (5) location of activity;
  - (6) name for project site;
  - (7) name of applicant, petitioner or violator;
  - (8) activity category;
  - (9) activity purpose;
  - (10) public hearings;
  - (11) permit duration;
  - (12) area of wetland soils and watercourse altered;
  - (13) area of wetland and watercourse created;
  - (14) lineal feet of brook, river or stream altered;
  - (15) acreage of lake, pond or similar open water body filled or dredged;
  - (16) total land area of the project including uplands and wetlands and watercourses;
  - (17) soil classifications; and
  - (18) name of the person(s) who completed the form.

(c) The location of the action reported shall be outlined or pinpointed on an eight and one half by eleven inch (8½ by 11 inch) photocopy of a portion of the USGS quadrangle map for the area in question. The Commissioner shall provide a single set of U.S. Fish & Wildlife Service National Wetland Inventory Maps to each municipal inland wetland agency for this purpose.

(d) The municipal inland wetland agency may require applicants or petitioners for map changes to complete appropriate portions of the form as part of the application filing.

(e) The inland wetland agency shall ensure that the information provided on reporting forms is accurate and that it reflects the final action of the agency.

(f) Completed reporting forms for actions taken during a calendar month shall be mailed by the municipal wetland agency to the Commissioner at the address noted on the form no later than the 15th day of the following month.

(g) The Commissioner may revise the inland wetland activity reporting form and may issue instructions or guidelines to help municipal inland wetland agencies complete and file them in a timely fashion.

(Effective December 29, 1988)

**Sec. 22a-39-15. Payments to the state for acting on inland wetlands and watercourses permit applications**

(a) After July 1, 1988 any applicant for an inland wetlands and watercourses permit filed with the commissioner pursuant to section 22a-39 (i) of the General Statutes for activity in

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a town which has not established an inland wetlands and watercourses agency pursuant to section 22a-42 of the General Statutes, shall pay the state an application fee based on the fee schedules established in subsection (i) of this section.

(b) Any municipality whose jurisdiction under sections 22a-36 through 22a-45 of the General Statutes has been revoked by the Commissioner, shall pay the state for its acting on applications for inland wetland or watercourse activity in such municipality in accordance with the fee schedules established in subsection (i) of this section. All fees payable to the state by the municipality shall be billed to the municipality after final action has been taken on the application. Payment shall be made within 90 days.

(c) If the Commissioner revokes municipal jurisdiction, any fees due the municipality from applicants for inland wetland activity under the municipal inland wetland regulations, shall instead be paid by the applicant to the state. All such fees shall be paid at the time the application is filed with the Commissioner.

(d) In the case of inland wetland applications pending before a municipality whose jurisdiction has been revoked, the municipality shall refund to the applicant any application fees submitted to it with instruction to remit such fees to the state pursuant to subsection (c) of this section.

(e) Application fees are not refundable.

(f) No application shall be deemed complete unless the correct application fee required from the applicant is paid in full or unless a waiver has been granted to the applicant by the Commissioner pursuant to subsection (j) of this Section.

(g) **Method of Payment.** All fees required by these regulations shall be submitted to the Commissioner by certified check or money order made payable to the "Treasurer of the State of Connecticut" provided payments by municipalities may be made by the draft of such municipality.

(h) **Definitions:**

"residential uses" means activities carried out on property developed for permanent housing or being developed to be occupied by permanent housing on an individual building lot or as part of a subdivision of land for housing.

"commercial uses" means activities carried out on property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.

"other uses" means activities other than residential uses or commercial uses.

(i) **Fee Schedule.** Application fees shall be based on the following schedule:

(1) Regulated Uses

Residential uses on single lot . . . . .	\$400.00
plus fee from schedule A	
Commercial uses of single lot . . . . .	\$500.00
plus fee from schedule A	

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Subdivision.....	\$200.00
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Plus:

(A) \$45.00 for each proposed subdivision lot whether or not such lots contain wetlands or watercourses, and

(B) \$110.00 for each lot on which a regulated activity is proposed, and

(C) fee from schedule A

All other uses.....	170.00
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plus fee from schedule A

(2)

Significant Activity Fee.....	\$525.00
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(A) A significant activity fee shall be paid if the application involves an activity upon a wetland or watercourse which will have or is likely to have a “significant impact or major effect” as these terms are defined in section 22a-39-2 of the Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection and a public hearing is required pursuant to section 22a-29 (k) of the General Statutes.

(B) If the Commissioner waives the requirement for the public hearing and subsequently holds a public hearing solely as a result of a petition pursuant to section 22a-39 (k) of the General Statutes, the significant activity fee shall be waived, except in any case where municipal jurisdiction to regulate wetlands and watercourses has been revoked in accordance with section 13 of Public Act 87-533, a \$525.00 public hearing fee shall be paid by the municipality in which the regulated activity is proposed to take place.

(3)

Post Permit Inspection.....	\$150.00
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A post permit inspection fee of \$150.00 shall be paid prior to the issuance of any permit. In any case where additional scheduled inspections are required, the commissioner shall determine the number of, and schedule for, post permit inspections and provide the applicant an opportunity to contest the additional fees prior to the issuance of the permit. The fee for such additional inspections shall be \$150.00 each.

(4)

Modification of Existing Permit.....	\$25.00
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This fee applies to the transfer of a permit to a new permittee, minor plan revisions within the scope of the original application and permit, modification of specific terms or conditions imposed as part of the permit, and similar administrative actions. There shall be no fee for

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correcting typographical or other errors which are the responsibility of the Department of Environmental Protection.

SCHEDULE A. The regulated area in schedule A is the total area of wetlands and watercourses upon which a regulated activity is proposed. To calculate the fee, round up to the next highest 1000 square feet (example: 2340 square feet is rounded up to 3000 square feet).

SQ. Ft. Regulated Area	Fee/1000 Sq. Ft. Regulated Area
Less than 2,000 . . . . .	\$18.00 per 1000 square feet
2,000 to 50,000 . . . . .	\$36.00 plus \$12.00 per 1000 square feet
More than 50,000 . . . . .	\$600.00 plus \$6.00 per 1000 square feet

(j) **Waiver.** The applicant may petition the Commissioner to waive, reduce or allow delayed payment of the fee required by this section. Such petitions shall be in writing and shall state fully the facts and circumstances the Commissioner should consider in his or her determination under this section. The Commissioner may waive all or part of the application fee if:

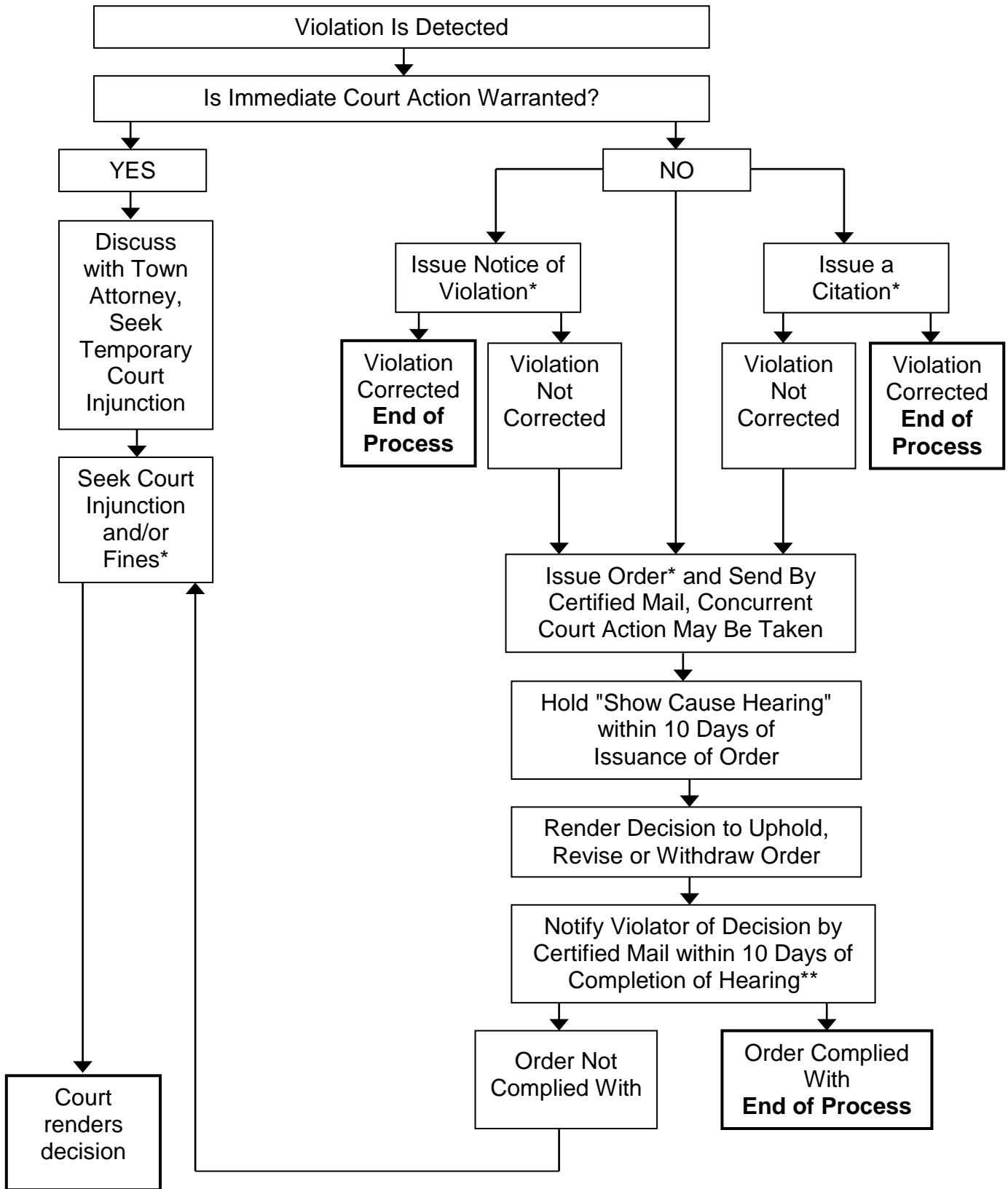
(1) the activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or

(2) the amount of the application fee is clearly excessive in relation to the cost to the State for reviewing and processing the application.

The Commissioner shall state upon the record the basis for all actions under this subsection.

(Effective December 29, 1988)

# SAMPLE ENFORCEMENT FLOW CHART (CGS Sec. 22a-42g and 22a-44)



\* Complete the DEEP Statewide Inland Wetlands & Watercourses Activity Reporting Form and submit no later than the 15<sup>th</sup> day of the month following the month in which the action was taken.

\*\* Although not required by statute, it is good practice to publish a notice of the decision in the newspaper.



**SOIL SCIENTIST QUALIFICATIONS  
FOR  
THE STATE OF CONNECTICUT  
INLAND WETLANDS AND WATERCOURSES ACT**

In 1972, recognizing the importance of inland wetlands and watercourses, Connecticut's legislature enacted the Inland Wetlands and Watercourses Act (IWWA: sections 22a-36 through 22a-45 of the General Statutes of Connecticut). The IWWA defines "wetlands" as land, consisting of soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey. Since the Connecticut IWWA uses a soil-based definition of wetlands, a soil scientist is necessary to determine and delineate such wetlands. Therefore the IWWA also defines a "soil scientist" as an individual meeting standards set by the federal Office of Personnel Management. Various professional soil science organizations also "certify" a person as a soil scientist. This fact sheet will clarify the Connecticut IWWA definition of soil scientist and will describe how the standards of the federal Office of Personnel Management correspond to the membership criteria established by professional soil science organizations.

I. State of Connecticut Definition

- a. From the General Statutes of Connecticut (Revised to January 1, 2007), Title 22a, Chapter 440, Inland Wetlands and Watercourses Act

Section 22a-38. Definitions. (5) "Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management;

- i. From the U.S. Office of Personnel Management, Operating Manual for Qualification Standards for General Schedule Positions, Section IV-B (GS-470 Soil Science Series):

Qualification Standard for Soil Scientist:

- A degree in soil science or a closely related discipline that included 30 semester hours or equivalent in biological, physical, or earth science, with a minimum of 15 semester hours in such subjects as soil genesis, pedology, soil chemistry, soil physics, and soil fertility.

OR

- A combination of education and experience--courses equivalent to a major in soil science or a related discipline that included at least 30 semester hours in the biological, physical, or earth sciences. At least 15 of these semester hours must have been in the areas specified in A above, plus appropriate experience or additional education.

## II. Professional Soil Science Organizations

### a. Society of Soil Scientists of Southern New England (SSSSNE)

The SSSSNE annually publishes a listing of its members who meet their qualifications for Basic and Professional Members.

- i. *Basic Member* status requires a BS degree with 30 semester credit hours in the biological, physical, chemical, and earth sciences, with a minimum of 15 of these semester credits in soil science courses, meeting the following distribution, and approval of the Board of Directors:

- A minimum of three semester credits in Soil Genesis, Classification, Morphology, and Mapping.

AND

- The remaining soil science credits must be in at least three of the following six categories:

- 1) Introductory Soil Science
- 2) Soil Chemistry/Fertility
- 3) Soil Physics
- 4) Soil Microbiology/Biochemistry
- 5) Soil Survey Interpretations/Soils and Land Use/Soils and the Environment
- 6) Independent Study/Seminar/Geology (three-credit maximum)

NOTE: Course(s) must be related to soil science.

- ii. *Professional Member* status requires the qualifications of Basic Member, plus three years (full-time equivalent) experience in soil science, subject to approval of the Board of Directors. M.S. and Ph.D. degrees in soil science each count as one year of experience. Applicants must provide information detailing types and amount of soil science experience along with letters from two qualified soil scientists attesting to the applicant's qualifications and work experience.

- iii. *For Further Information:* <http://nesoil.com/ssssne/> OR Society of Soil Scientists of Southern New England, PO Box 258, Storrs, CT 06268

### b. Soil Science Society of America Soil Certification (SSSA)

The SSSA provides a certification program for soil scientists. There are four certification options available:

- i. *Certified Professional Soil Scientist (CPSS)*
- ii. *Certified Professional Soil Classifier (CPSC)*
- iii. *Associate Professional Soil Scientist (APSS)*
- iv. *Associate Professional Soil Classifier (APSC)*

In general, eligibility requirements are:

- Minimum of a bachelor's degree with a major in the area for which application is made, or a closely allied field of science and meet the minimum core requirements.

Core requirements are 15 semester credits soil science (a soil classifier must include 5 semester hours in soil genesis, morphology, classification, interpretation, or mapping within the 15 semester credits of soil science), 6 semester credits plant or soil biology, and 3 semester credits additional core courses.

- Five years of professional experience, subsequent to the bachelor's degree, working in the area of certification. Experience while working toward an advanced degree does not qualify. Three years of experience is necessary for those with Masters degrees or PhD's.
- Five references familiar with work experience; at least one must be associated with applicant's employment.

As of January 1, 1998, qualification as a CPSS or CPSC requires passing two exams developed by the Soil Science Society of America (in addition to the requirements outlined in 1, 2, and 3 above):

Fundamentals exam – to be taken by graduating seniors and those without experience. After passing this exam, applicants would be APSS's or APSC's.

Professional practice exam – to be taken after required experience is achieved.

- v. *For Further Information:* <https://www.soils.org/certifications/cpss-cpsc/>  
OR: ASA Headquarters, Member Services Dept., ATTN: Certification Programs, 677 S. Segoe Road, Madison, WI 53711; (608) 268-4957

### III. Important:

- a. A soil scientist, meeting such definition as provided for in the Connecticut Inland Wetlands and Watercourses Act, does not need to be SSSA certified or listed in the Registry of the SSSSNE to delineate Connecticut wetlands.
- b. A soil scientist certified by one of the above mentioned professional soil scientist organizations meets the definition of soil scientist as provided for in Connecticut's Inland Wetlands and Watercourses Act.



United States Department of Agriculture

Natural Resources Conservation Service



Connecticut Department of  
Energy and Environmental Protection

May 2015

## CLARIFICATION OF WETLAND SOIL CRITERIA FOR HUMAN-ALTERED AND HUMAN-TRANSPORTED SOILS IN CONNECTICUT

### The Statute

The Connecticut General Statutes Section 22a-38 defines inland wetlands as:

*"land, including submerged land, not regulated pursuant to sections 22a-28 to 22a-35, inclusive, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soil Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture"*

The National Cooperative Soil Survey (NCSS) is a nationwide partnership of Federal, regional, State, and local agencies and private entities and institutions (USDA-NRCS 2014). The Natural Resources Conservation Service (NRCS, formerly Soil Conservation Service or SCS) is responsible for the leadership of soil survey activities of the U.S. Department of Agriculture and for the leadership and coordination of NCSS activities.

The Soil Survey of the State of Connecticut is the official NCSS soil survey for Connecticut (Soil Survey Staff). The soil survey is a collection of map units which are areas defined and named in terms of their soil components. The survey contains a detailed description of the properties and qualities of each soil component including drainage class, parent material, and geomorphic component (i.e. soil properties and interpretations referenced in the statute above). Based on these properties, NRCS provides an interpretive list of map units dominated by soil types that meet the wetland soil criteria defined in the statute. This report is referred to as the Connecticut Inland Wetland Soils list (available as a Web Soil Survey report<sup>1</sup> and on Connecticut eFOTG<sup>2</sup>). Attention should be given to the appropriate use of soil survey maps in regard to map scale. A relevant excerpt from the 'Use Constraints' section of the Soil Survey of the State of Connecticut metadata is reprinted in Appendix A.

### Hydrologic alteration

Alteration of hydrology in the form of lowered water tables (e.g. ditching, tiling, stream alteration/channelization, etc.)

<sup>1</sup> Web Soil Survey: Soil Data Explorer tab, Soil Reports sub-tab, AOI Inventory, Selected Soil Interpretations, Inland Wetlands (CT); also available on the USDA-NRCS CT Soils page under "Connecticut Soil Survey Interpretations"

<sup>2</sup> NRCS-CT eFOTG: Section II, Soils Information, 2. Soil Tables and Interpretations, Statewide CT, c. CT Inland Wetland Soils

are recognized as artificial drainage in the Keys to Soil Taxonomy. By definition<sup>3</sup>, poorly drained and very poorly drained soils that are ditched, tiled, or otherwise drained are still recognized as poorly drained and very poorly drained soils.

### Human-altered and human-transported soils

*Human-altered and human-transported (HAHT) soils* is the term used by NRCS that describes soils commonly referred to as (but not limited to) fill or filled, excavated, or anthropogenic<sup>4</sup>. The Soil Survey of the State of Connecticut does not contain detailed descriptions of HAHT soil types. Consequently, the Connecticut Inland Wetland Soils list does not contain map units with wetland HAHT soils. In lieu of NCSS published wetland HAHT soil types, the assignment of drainage class for HAHT soils should be based on the same criteria used to assign soil types in the Soil Survey for the State of Connecticut and on the Connecticut Inland Wetland Soils list. Those criteria are defined by the presence of specific diagnostic horizons and properties in the latest edition of the *Keys to Soil Taxonomy*<sup>5</sup>.

### Drainage class for unmapped soil types

Drainage class identifies the natural drainage condition of the soil (USDA-NRCS 2014). It refers to the frequency and duration of wet periods under conditions similar to those under which the soil developed. Drainage class is inferred from observation of landscape position and soil morphology. In some instances direct observations and/or measurements of hydrology and reduced conditions may be used to aid in drainage class determination.

For the Soil Survey of the State of Connecticut, moisture regime was used to assign drainage class to soils. Soil types with aquic or peraquic moisture regimes are correlated to poorly or very poorly drained drainage class. Appendix B has more information regarding criteria used to diagnose moisture regime.

HAHT soils with aquic moisture regimes meet the wetland soils definition in the Connecticut General Statute section 22a-38 as relates to drainage class. Areas of these soils are therefore wetlands and regulated under the Connecticut Inland Wetlands and Watercourses Act.

### Problematic morphologic features in HAHT soils

Human transported materials (i.e. fill) may be sourced from a wide variety of areas, including those with wetland hydrology. Such fill material may exhibit redoximorphic features (i.e. wetland soil morphologic features) associated with the prior moisture regime before the material was excavated, transported, and redeposited. Such features are termed *relict* and should not be used as diagnostic criteria for classification as they may indicate a *false positive* diagnosis of aquic moisture regime. Conversely, recent fill material subject to wetland hydrology may not have had enough time under aquic conditions to develop redoximorphic features. Such material may indicate a *false negative* diagnosis of aquic moisture regime. This is not to suggest that all morphologic features in fill material should be disregarded, however they should receive extra scrutiny from the describer<sup>6</sup>.

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<sup>3</sup> "Artificial drainage is defined here as the removal of free water from soils having aquic conditions by surface mounding, ditches, or subsurface tiles or the prevention of surface or ground water from reaching the soils by dams, levees, surface pumps, or other means. In these soils water table levels and/or their duration are changed significantly in connection with specific types of land use. Upon removal of the drainage practices, aquic conditions would return. In the keys, artificially drained soils are included with soils that have aquic conditions." (Soil Survey Staff 2014, page 26).

<sup>4</sup> HAHT soils do not, as defined in the Keys to Soil Taxonomy, include soils that are altered solely in regard to hydrology (Soil Survey Staff 2014). For information regarding hydrologic alteration, see the section titled **Hydrologic Alteration**.

<sup>5</sup> Soil Taxonomy is the system of soil classification used by USDA-NRCS to order, name, organize, understand, remember, transfer, and use information about soils (USDA-NRCS 2014). Soil Taxonomy can be applied to all soils, including HAHT soils, regardless of the amount or type of disturbance.

<sup>6</sup> The National Technical Committee for Hydric Soils published a technical note regarding altered hydric soils that discusses morphologic

In cases where the morphologic features of fill material are thought to not accurately reflect the current soil moisture regime (based on best professional judgment), other methods in lieu of morphologic features may be used to identify the actual depth to aquic conditions<sup>7</sup>.

### **Floodplains and alluvial soils**

In Connecticut, all soil types (regardless of soil moisture regime) formed on floodplains from alluvial parent materials are recognized as wetlands as defined in Connecticut General Statute section 22a-38. HAHT soils found in these landscape positions with underlying alluvial parent materials may still correlate to alluvial soils<sup>8</sup>. Further, filled/buried alluvial soils should be scrutinized as to whether they are still subject to a flooding regime that characterizes flood plains and deposits alluvial soils.

### **Levees and other alteration of flooding regime**

Alluvial and floodplain soils in areas that are protected by levees or otherwise altered to remove or lessen the natural flooding regime are still considered alluvial and/or floodplain soils<sup>9</sup> and are considered wetland areas per Connecticut General Statute section 22a-38.

### **Generalizations concerning depths of fill and how it affects identification of wetland soils**

Due to the variability of HAHT soils, generalizations about specific depth of fill should not be used to assign soil moisture regime and drainage class. Only accurate on-site observation, description, and classification using USDA-NRCS standards<sup>10</sup> will provide a defensible technical determination of whether a HAHT soil meets wetland soil criteria defined in Connecticut General Statutes Section 22a-38.

### **Buried soils, surface mantles, and their effect on drainage class**

Soil moisture (including aquic conditions) for the purpose of classification is *always* evaluated from the actual soil surface in all soils (HAHT soils, buried soils, or otherwise; Soil Survey Staff 2014). Supplemental information regarding the effect of buried soils and surface mantles on the classification using Soil Taxonomy is given in Appendix C. Examples with illustrations are provided in Appendix D.

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characteristics that can suggest relict features (NTCHS).

<sup>7</sup> The Hydric Soil Technical Standard identifies methods to identify anaerobic and saturated conditions in lieu of field indicators based on soil morphology (NTCSH 2007). Anaerobic and/or saturated conditions may correspond to aquic conditions, as defined in the Keys to Soil Taxonomy. Aquic conditions within specified depths are diagnostic criteria for all of the taxonomic suborders mentioned in Appendix B, and hence aquic moisture regime.

<sup>8</sup> Soils that classify as *fluvents* suborder typify alluvial or floodplain soils. In other soil orders the recognition of alluvial soils taxa is often determined at the sub group level with a prefix of *Fluv-*. A brief discussion of the nature of floodplain soils as relates to classification is on page 406 of Soil Taxonomy (Soil Survey Staff 1999).

<sup>9</sup> These areas may be phased according to their altered flooding regime (e.g. *Rippowam fine sandy loam, flood protected*) and may be dealt with especially according to the degree of flooding regime alteration, as determined by the appropriate local or state officials.

<sup>10</sup> A discussion and list of USDA-NRCS standards is available in the National Soil Survey Handbook Part 600. Of particular note to field professionals making Connecticut Inland Wetlands determinations are:

- Field Book for Describing and Sampling Soils, Version 3.0. (2012)
- Keys to Soil Taxonomy (current edition)

## Appendix A:

Excerpt from the Soil Survey of the State of Connecticut (version 13) spatial metadata section titled 'Use Constraints':

This data set is not designed for use as a primary regulatory tool in permitting or citing decisions, but may be used as a reference source. This is public information and may be interpreted by organizations, agencies, units of government, or others based on needs; however, they are responsible for the appropriate application. Federal, State, or local regulatory bodies are not to reassign to the Natural Resources Conservation Service any authority for the decisions that they make. The Natural Resources Conservation Service will not perform any evaluations of these maps for purposes related solely to State or local regulatory programs.

Photographic or digital enlargement of these maps to scales greater than at which they were originally mapped can cause misinterpretation of the data. If enlarged, maps do not show the small areas of contrasting soils that could have been shown at a larger scale. The depicted soil boundaries, interpretations, and analysis derived from them do not eliminate the need for onsite sampling, testing, and detailed study of specific sites for intensive uses. Thus, these data and their interpretations are intended for planning purposes only. Digital data files are periodically updated. Files are dated, and users are responsible for obtaining the latest version of the data.

## Appendix B:

Each soil order has its own set of diagnostic criteria (found in the Key to Suborders section of the *Keys to Soil Taxonomy*) related to whether a soil has an aquic or peraquic moisture regime. Soils in Connecticut (including HAHT soils) with an aquic or peraquic moisture regime would classify as one of the following suborders:

- Aquents (Entisols)
- Aquepts (Inceptisols)
- Aquolls (Mollisols)
- Aquods (Spodosols)
- Fibrists, Hemists, or Sapristis (Histosols)
- Aqualfs

The *Keys to Soil Taxonomy* reference specific morphologic features that would classify a soil to one of these (or other) orders and suborders. There is no single accurate rule-of-thumb in regard to morphologic properties to diagnose moisture regime; the *Keys* should always be used as they are the most significant standard used by USDA-NRCS in the correlation of soils to drainage class and soil types (i.e. series).

The *Field Indicators of Hydric Soils in the United States* is a standard used to identify and delineate hydric soils in the field for federal wetland delineations. Other state, and/or local laws may specifically reference hydric soils in their definition of wetlands or in the regulations and/or policy that outlines how wetlands should be identified and delineated.

Professionals engaged in the myriad jurisdictions of wetland-related field work will likely be familiar with hydric soil indicators. The Connecticut Inland Wetlands and Watercourses Act does not specifically reference hydric soils in its definition of wetlands and therefore there is no direct statutory link to hydric soil field indicators. Further, hydric soil field indicators were not exclusively used in assigning drainage class to soil types. However, hydric soil field indicators are based on extensive research and field testing and the *Field Indicators of Hydric Soils in the United States* is an excellent resource for professionals engaged in wetland delineation. While hydric soil field indicators do not serve as direct or indirect evidence of wetlands per Connecticut statute, their presence (including indicators approved for problematic materials) would suggest either aquic or peraquic moisture regime. There may, however, be soils that meet the Connecticut Inland wetland definition criteria and do not meet a hydric soil field indicator. Field indicators should not be used in lieu of the specific criteria in the Connecticut statute.

## **Appendix C**

### **Buried soils and their effect on taxonomic classification**

Page 37 of Chapter 4 of the Keys to Soil Taxonomy explain the effect of buried soils and surface mantles on the depths used to identify diagnostic soil horizons and characteristics (Soil Survey Staff 2014). Additionally, the USDA-NRCS has published a Technical Note title [“Buried soils and their effect on taxonomic classification”](#) (Soil Survey Staff 2013) to provide clarification regarding the proper recognition and assignment of control sections and diagnostic horizons and characteristics in soils with surface mantles (e.g. human transported fill or natural deposits). A major issue addressed in this Technical Note relevant to Connecticut General Statutes Section 22a-38 is how to classify soils with thin surface mantle deposits (e.g. thin deposits of fill). Depending on characteristics of the surface mantle, either the whole soil (mantle and underlying soil materials) or only the soil materials under the mantle will be used for identification of diagnostic criteria for classification. Again, soil moisture (including aquic conditions) is always evaluated from the actual soil surface.



## Appendix D

### Illustrations of evaluating aquic conditions in HAHT soils

Figure 1 illustrates a case where an original mineral soil, an *Aquepts* suborder (poorly drained), with aquic conditions at 5 inches is filled with 10 inches of human-transported material. The filled soil is reexamined in regard to aquic conditions, which are found at 15 inches. Though the depth to aquic conditions has increased, in this example the soil would still classify as an *Aquepts*, with aquic conditions within 20 inches, and meet the definition of a poorly drained soil.

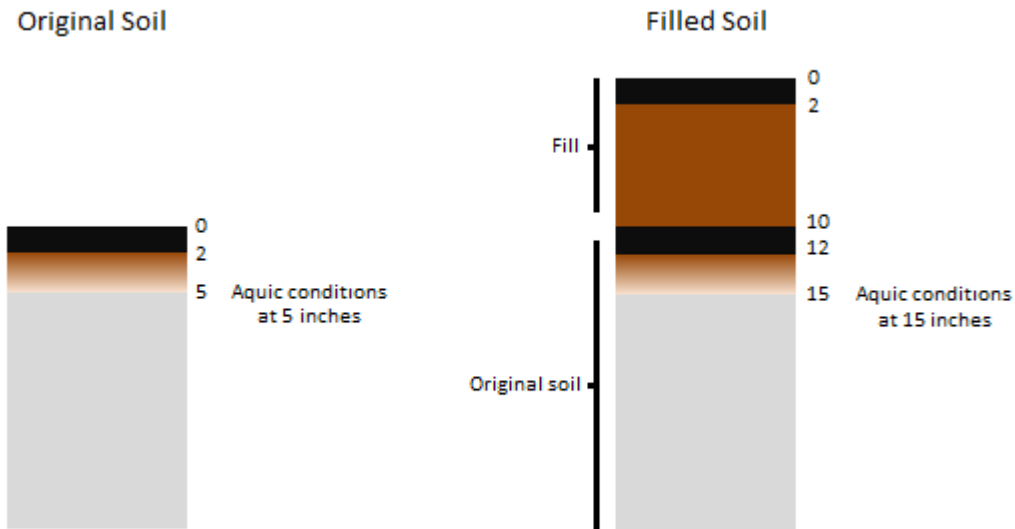


Figure 1. Example of change in depth to aquic conditions after place of fill

Figure 2 illustrates a case where an original mineral soil, an *Aquepts* suborder (very poorly drained), with morphology indicating aquic conditions at the surface and with seasonal ponding (5 inch depth over soil surface), is filled with 21 inches of human-transported material. The filled soil is reexamined in regard to aquic conditions, which are found at 16 inches (based on redoximorphic features in the overlying human-transported material). In this example, the filled soil would classify as an *Aquepts* or *Aquents* with aquic conditions within 20 inches, and meet the definition of a poorly drained soil.

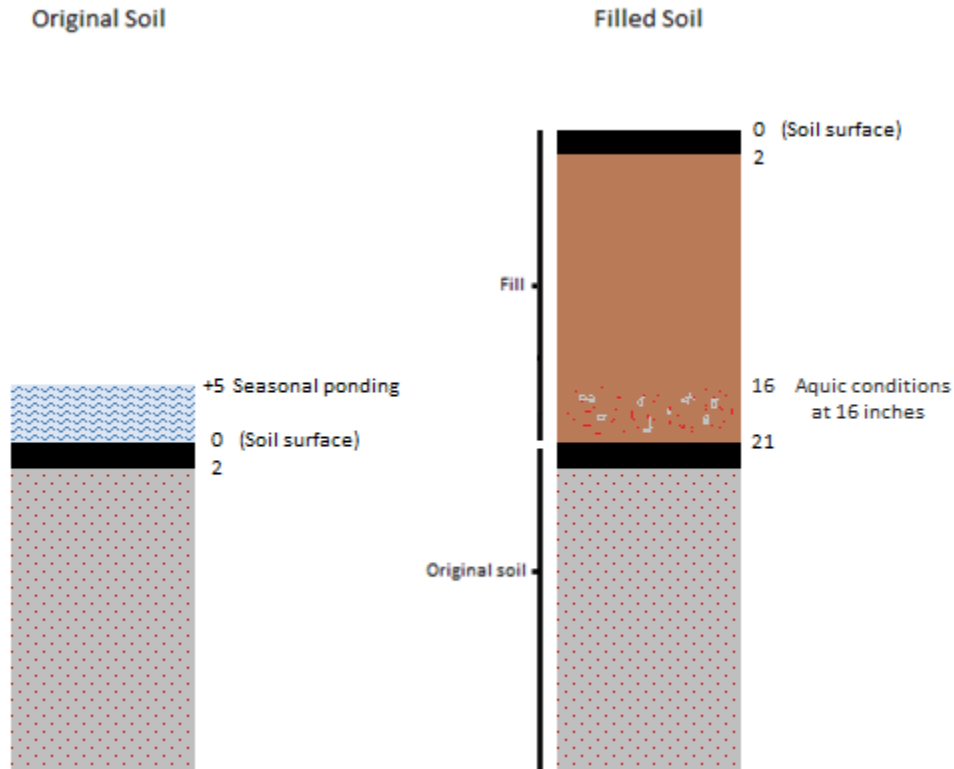


Figure 2. Example of change in depth to aquic conditions after place of 21-inches of fill

Figure 3 shows the same original condition as Figure 2, however in this scenario a greater depth, 30 inches, of human transported material have been deposited. The filled soil is reexamined in regard to aquic conditions, which are found at 25 inches. In this example, the soil would classify as an *Udorthents* (not an *Aquents* or *Aquepts*), failing to meet the definition of a poorly drained soil and therefore failing the definition of an inland wetland area.

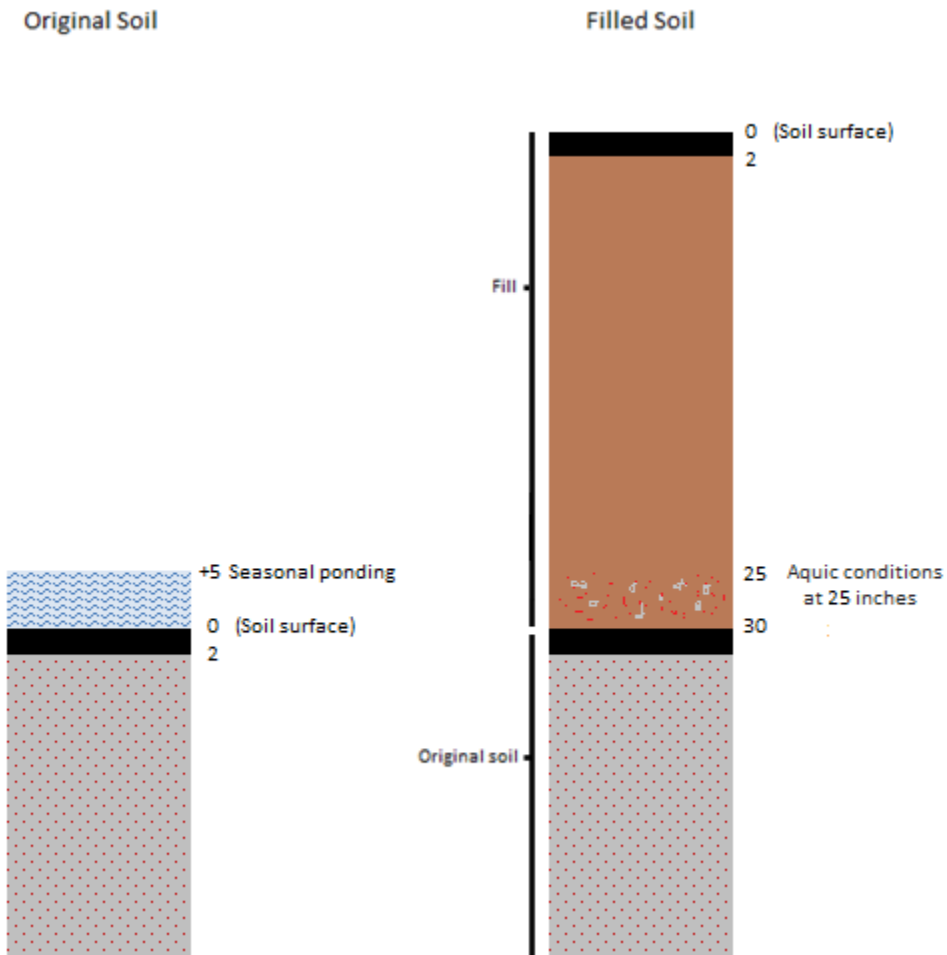


Figure 3. Example of change in depth to aquic conditions after place of 30-inches of fill

## Appendix E

### Glossary

Disclaimer: The following abridged definitions and notes are provided for clarity and quick reference while using this guidance document. They are not intended to, and should not, replace full definitions for these terms found in official USDA-NRCS standards listed in the National Soil Survey Handbook Part 600.

**alluvial** – Pertaining to material or processes associated with transportation and/or subaerial deposition by concentrated running water. (U.S. Department of Agriculture, Natural Resources Conservation Service. National soil survey handbook, title 430-VI. Available online. Accessed 05/01/2015).

**aquic conditions** – continuous or periodic saturation and reduction (Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed.). *Note: aquic conditions are not specific to any range of depths in a soil. For example, a soil may have aquic conditions starting at a depth of 50 centimeters from the soil surface. Aquic conditions are **not** synonymous with aquic moisture regime.*

**aquic [soil] moisture regime** – a reducing regime that is virtually free of dissolved oxygen because it is saturated by water (Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed.). *Note: aquic moisture regime implies the presence of aquic conditions at or near the soil surface. There is not one set of diagnostic criteria or depths to determine aquic moisture regime. Aquic moisture regime is **not** synonymous with aquic conditions.*

**flood plain** – The nearly level plain that borders a stream and is subject to inundation under flood-stage conditions unless protected artificially. It is usually a constructional landform built of sediment deposited during overflow and lateral migration of the streams. (U.S. Department of Agriculture, Natural Resources Conservation Service. National soil survey handbook, title 430-VI. Available online. Accessed 05/01/2015).

**Human-altered material** – parent material for soil that has undergone soil mixing or disturbance by humans (Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed.). *Note: this material is a formal diagnostic characteristic in soil taxonomy and is defined by specific criteria described in the Keys to Soil Taxonomy.*

**Human-transported material** – parent material for soils that has been transported onto a pedon from a source area outside of that pedon by purposeful human activity (Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed.). *Note: this material is a formal diagnostic characteristic in soil taxonomy and is defined by specific criteria described in the Keys to Soil Taxonomy.*

**hydric soil** – a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part (U. S. Department of Agriculture, Natural Resources Conservation Service. 2010. Field Indicators of Hydric Soils in the United States, Version 7.0.). *Note: ‘hydric soil’ is not a term directly reference by Connecticut General Statutes Section 22a-38 or by USDA-NRCS for the purpose of assigning drainage class to soil components in the official soil survey. This term is defined here and referenced in this guidance document for the purpose of differentiating hydric soils from inland wetland soil types as defined in CT General Statues.*

**peraquic moisture regime** – a regime where ground water is always at or very close to the soil surface (Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed.).

**poorly drained** – water is removed so slowly that the soil is wet at shallow depths periodically during the growing season or remains wet for long periods. *Note: alteration of the water regime by man, either through drainage or irrigation, is not a consideration in assigning drainage class.*

**very poorly drained** – water is removed from the soil so slowly that free water remains at or very near the ground surface during much of the growing season (Soil Survey Division Staff. 1993. Soil survey manual.). *Note: alteration of the water regime by man, either through drainage or irrigation, is not a consideration in assigning drainage class.*

**References:**

- National Technical Committee for Hydric Soils (NTCHS). 2007. Technical Note 13: Altered Hydric Soils. Available online at: [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs142p2\\_051928.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_051928.pdf). Accessed 8/31/2015.
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**APPLICATION  
FOR  
REGULATED ACTIVITY  
  
TIMELINE**

The Connecticut Inland Wetlands and Watercourses Act section 22a-36 through section 22a-45 establishes a specific timeline for the receipt and review of applications for regulated activities.

The timeline begins when an application for a regulated activity is submitted to the inland wetlands agency.

The timeline is as follows:

1. Application for a regulated activity is submitted to the inland wetlands agency.
2. The date of receipt of the application is the day of the next regularly scheduled meeting of the inland wetlands agency immediately following the day of submission to such agency or its agent, or thirty-five days after such submission, whichever is sooner.
3. Two options now exist - to hold a public hearing or not to hold a public hearing.
4. If NO public hearing is held:
  - a. the inland wetlands agency must wait 14 days before taking action on the application.
  - b. the inland wetlands agency must take action on the application within 65 days after the date of receipt.
5. If a public hearing IS held:
  - a. the inland wetlands agency must start the public hearing within 65 days after the date of receipt.
  - b. the inland wetlands agency must complete the hearing within 35 days after the hearing started.
  - c. the inland wetlands agency must take action on the application within 35 days after the hearing is finished.
6. The applicant can consent to one or more extensions of any of the times noted above provided the cumulative extension does not exceed 65 days.

\* For complete timeline information refer to the Inland Wetlands and Watercourses Act

# **REGULATION AMENDMENTS**

## **TIMELINE**

The Connecticut Inland Wetlands and Watercourses Act section 22a-36 through section 22a-45 establishes a specific timeline for the amendment of inland wetlands agency regulations.

The timeline begins when an amendment is proposed.

The timeline is as follows:

1. Amendment is proposed.
2. The amendment and the notice of the public hearing must be submitted to the Commissioner of DEEP at least 35 days before such hearing on the amendment is held.
3. A public hearing on the amendment must be held within 65 days after the receipt of the amendment proposal.
4. The public hearing must finish within 35 days after it started.
5. The inland wetlands agency must take action on the amendment proposal within 65 days after the hearing ends.
6. The inland wetlands agency must submit the final adopted amendment language to the Commissioner of DEEP not later than 10 days after adoption.

\* For complete timeline information refer to the Inland Wetlands and Watercourses Act.



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# **INLAND WETLANDS AND WATERCOURSES**

## **MODEL MUNICIPAL REGULATIONS**

**FOURTH EDITION**

**MAY 1, 2006**



**STATE OF CONNECTICUT**  
**DEPARTMENT OF**  
**ENVIRONMENTAL PROTECTION**  
79 Elm Street  
Hartford, CT 06106-5127

**Gina McCarthy, Commissioner**

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**CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**INLAND WETLANDS AND  
WATERCOURSES MODEL MUNICIPAL REGULATIONS**

**FOURTH EDITION**

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## INTRODUCTION

The Wetlands Management Section of the Connecticut Department of Environmental Protection (DEP) is pleased to present this model regulation for use by Connecticut's municipal inland wetlands agencies. The purpose of the model is to present a framework for municipal inland wetlands and watercourses regulations that ensures conformity with the Inland Wetlands and Watercourses Act, sections 22a-36 through 45 of the Connecticut General Statutes. The model is designed so that it can be adopted with minimal changes or it can be customized to reflect the uniqueness of your municipality.

We at the DEP consider the model an important part of our efforts to assist your municipality in the administration of the Act. The model provides the DEP with a convenient forum to describe changes to municipal inland wetlands and watercourses regulations made necessary as a result of amendments to the Act. Further, the model is a valuable training tool for new municipal commissioners and staff, and the DEP continues to use the model in our Municipal Inland Wetland Commissioners Training Program. The model is a success; the majority of our municipalities now use the model to help navigate through the increasingly complex regulatory landscape in Connecticut.

The Department of Environmental Protection is an affirmative action/equal opportunity employer, providing programs and services in a fair and impartial manner. In conformance with the Americans With Disabilities Act, the DEP makes every effort to provide equal effective services for persons with disabilities. Individuals with disabilities needing auxiliary aids or services, or for more information by voice or TTY/TDD call (860) 424-3000.

## REVISIONS

This version of the Inland Wetlands and Watercourses Model Municipal Regulations is a revision of the prior model dated “Rev. March 1997”. It is considered the fourth edition and is dated May 1, 2006. This edition has been revised to be consistent with all amendments to the Inland Wetlands and Watercourses Act through December 31, 2004. It contains all the changes the DEP has made to the model as noted in our Legislation and Regulations Advisories up to and including our 2004 Legislation and Regulations Advisory dated November 29, 2004.

Items which have been revised are underlined. Specifically, revisions to the “Rev. March 1997” Model include the following:

### Section 2.1

- Bog- definition amended
- Designated Agent- definition deleted
- Discharge- definition amended
- Disturb the natural and indigenous character of the wetland or watercourse- definition deleted
- Essential to the farming operation- definition amended to remove the word “existing”
- Farming- definition amended, reference to Appendix A
- License- new definition to reflect statutory definition
- Marshes- definition amended
- Material- definition amended to reflect statutory definition
- Nurseries- definition amended
- Permit- definition deleted, reference to License
- Person- definition amended to reflect statutory definition
- Regulated Activity- definition has a reference to Appendix B
- Regulated Area- definition deleted
- Remove- definition amended to reflect statutory definition
- Significant impact- definition amended
- Swamps- definition amended
- Wetlands- definition amended to reflect statutory definition

### Section 3

- Title amended to read “Inventory of Wetlands and Watercourses”

### Section 3.1

- Regulated area changed to wetlands and watercourses

### Section 3.2

- Amended to allow any person rather than any owner to propose map amendments

### Section 3.3

- Amended so reference to any person is now in section 3.2
- Amended to delete reference to designated agent

Section 3.4

-New section applies to all map amendments

Section 4.1a

-Amended to reflect statutory language

Section 4.1b

-Amended to reflect statutory language

Section 4.1c

-Amended to reflect statutory language

Section 4.1d

-Amended to reflect statutory language

Section 4.1e

-Amended to reflect statutory language

Section 4.2

-Amended to reflect statutory language

Section 4.2 a

-Amended to reflect statutory language

Section 4.2 b

-Amended to reflect statutory language

Section 4.3

-Amended to add authority of duly authorized agent

Section 4.4

-Amended to reflect statutory authority

Section 5

-Amended to make clear the program areas that are regulated exclusively by the Commissioner of Environmental Protection, title of section amended.

Section 5.1

-Deleted and replaced with language of previous section 5.2

Section 5.2

-Deleted and replaced with language of previous section 5.3

Section 5.3

-Deleted and replaced with language of previous section 5.4

Section 5.4

-Deleted and replaced with language of previous section 5.1f

Section 7.5a

-Amended for clarification

Section 7.5f

-Amended to include statutory language

Section 7.5j

-Amended for clarification

Section 7.6

-Amended for clarification

Section 7.6e

-Amended to include statutory language

Section 8.1

-Amended to reflect amendments to the Act

Section 8.2

-Deleted to reflect amendments to the Act

Section 8.3

-Renumbered to section 8.2

-Amended to reflect amendments to the Act

Section 8.4

-Renumbered to section 8.3

Section 8.5

-Amended to reflect amendments to the Act

-Renumbered to section 8.4

Section 8.6

-Renumbered to section 8.5

Section 8.7

-Renumbered to section 8.6

Section 8.8

-Renumbered to section 8.7

Section 9.1

-Amended to reflect amendments to the Act

Section 9.3

-Deleted as not required by the Act

Section 9.4

-Deleted as not required by the Act

Section 10.1b

-Deleted as not allowed unless application is subject to a public hearing

Section 10.1c

-Renumbered to section 10.1b

Section 10.1d

-Renumbered to section 10.1c

Section 10.1e

-Renumbered to section 10.1d

-New section 10.1e added to address applications subject to public hearing

Section 10.5

-Deleted and replaced with new language to reflect amendments to the Act

Section 10.6

-New section added to reflect amendments to the Act

Section 10.7

-New section that contains the language of the former section 10.5

-Amended for clarification

Section 11.3

-Amended for clarification

Section 11.2

-Amended to reflect amendments to the Act

Section 12.1

-Amended for clarification

Section 13.1

-Amended to require a bond as a permit condition

Section 13.2

-Amended for clarification

Section 14.1

-Amended to delete reference to the authority to inspect property



#### Section 14.2

-Amended to allow inspections of permitted actions with consent of owner

#### Section 14.3

-New section to allow inspections of actions not permitted or expired permit

#### Section 14.4

-New section that contains the language of former section 14.3  
-Designated agent changed to duly authorized agent  
-Subsection b changed to c and limited only for action of Agency  
-Subsection c deleted

#### Section 14.5

-New section that contains the language of former section 14.4

#### Section 15.7

-Amended to reflect amendments to the Act

#### Section 15.8

-Amended to reflect amendments to the Act

#### Section 19

-Various amendments to fee schedule including change to the title of the section and addition of a Complex Application Fee

#### Section 20 and 21

-This section, formerly titled Records Retention and Disposition, has been deleted from the model. The Office of the Public Records Administrator of the Connecticut State Library is responsible for providing record management guidelines for municipal government offices. You can contact the Connecticut State Library at (860) 757-6540 and ask for Eunice G. DiBella, the Public Records Administrator. Information is also available on their web site [www.cslib.org](http://www.cslib.org). Because of this change, section 21 of the model is renumbered to be section 20 titled "Effective Date of Regulations".

**Section 1**  
**Title and Authority**

- 1.1 The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of these regulations to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.
- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of \_\_\_\_."
- 1.3 The \_\_\_\_\_(name of the inland wetlands and watercourses agency) of the Town of \_\_\_\_\_ was established in accordance with an ordinance adopted \_\_\_\_ and shall implement the purposes and provisions of these regulations and the Inland Wetlands and Watercourses Act in the Town of \_\_\_\_\_
- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of \_\_\_\_\_ pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

**Section 2**  
**Definitions**

2.1 As used in these regulations:

"Act" means the Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.

"Agency" means the \_\_\_\_\_ (name of the wetlands agency) \_\_\_\_\_ of the Town of

"Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.

"Clear-cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

"Commissioner of Environmental Protection" means the commissioner of the State of Connecticut Department of Environmental Protection.

"Continual flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.

"Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.

"Discharge" means emission of any water, substance, or material into waters of the state whether or not such substance causes pollution.

"Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.

"Farming" shall be consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes. (see Appendix A)

"Feasible" means able to be constructed or implemented consistent with sound engineering principles.

"License" means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of sections 22a-36 to 22a-45, inclusive.

"Management practice" means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use or development; construction setbacks from wetlands or watercourses; proper disposal of waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.

"Marshes" are watercourses that are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the

ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.

"Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.

"Municipality" means the Town of \_\_\_.

"Nurseries" means places where plants are grown for sale, transplanting, or experimentation.

"Permit" see license

"Permittee" means the person to whom a license has been issued.

"Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

"Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

"Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations.

(Note: if your town intends to regulate activities located in non-wetland or non-watercourse upland areas, notice that such activities are regulated activities and a description of the activities and extent of the upland review area should be provided under the definition of regulated activity. Please refer to Appendix C which contains the DEP guidance document, "Guidelines Upland Review Area Regulations Connecticut's Inland Wetlands and Watercourses Act June 1997. This document provides guidance in implementing the upland review area and lists three options municipalities may choose to incorporate into the definition of Regulated Activity.)

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect:

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
5. Any activity which causes substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
7. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

"Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.

"Swamps" are watercourses that are distinguished by the dominance of wetland trees and shrubs.

"Submerged lands" means those lands which are inundated by water on a seasonal or more frequent basis.

"Town" means the Town of \_\_\_.

"Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands and watercourses of the Town.

"Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (a) evidence of scour or deposits of recent alluvium or detritus, (b) the presence of standing or flowing water for a duration longer than a particular storm incident, and (c) the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

**Section 3**  
**Inventory of Inland Wetlands and Watercourses**

- 3.1 The map of wetlands and watercourses entitled "Inland Wetlands and Watercourses Map, (name of town) , Connecticut" delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the office of the Town Clerk or the Agency. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses. The Agency may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.
- 3.2 Any person may petition the Agency for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not be limited to aerial photography, remote sensing imagery, resource mapping or other available information. The Agency may require such person to provide an accurate delineation of regulated areas in accordance with section 15 of these regulations.
- 3.3 The Agency shall maintain a current inventory of regulated areas within the town. The Agency may amend its map as more accurate information becomes available.
- 3.4 All map amendments are subject to the public hearing process outlined in section 15 of these regulations.

**Section 4**  
**Permitted Uses as of Right & Nonregulated Uses**

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
- a. grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;
  - b. a residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, which ever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;
  - c. boat anchorage or mooring;

- d. uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse, or diversion or alteration of a watercourse;
  - e. Construction and operation, by water companies as defined by section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in chapter 102 of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403 of the Connecticut General Statutes and;
  - f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.
- 4.2 The following operations and uses shall be permitted, as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:
- a. conservation of soil, vegetation, water, fish, shellfish and wildlife; and
  - b. outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.
- 4.3 All activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, or grading or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Agency in accordance with section 6 of these regulations, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with section 12 of these regulations.
- 4.4 To carry out the purposes of this section, any person proposing a permitted operation and use or a nonregulated operation and use shall, prior to commencement of such operation and use, notify the Agency on a form provided by it, and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of a wetland or watercourse. The Agency shall rule that the proposed operation and use or portion of it is a permitted or nonregulated operation and use or that the proposed operation and use is a regulated activity and a permit is required.

## **Section 5**

### **Activities Regulated Exclusively by the Commissioner of Environmental Protection**

- 5.1 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or

instrumentality of the State of Connecticut, except any local or regional board of education, pursuant to sections 22a-39 or 22a-45a of the Connecticut General Statutes.

- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Environmental Protection under sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.
- 5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under section 404 of the Federal Clean Water Act.

## **Section 6 Regulated Activities to be Licensed**

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the \_\_\_\_\_ (name of the wetlands agency) \_\_\_\_\_ of the Town of \_\_\_\_.
- 6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law.

## **Section 7 Application Requirements**

- 7.1 Any person intending to conduct a regulated activity or to renew or amend a permit to conduct such activity, shall apply for a permit on a form provided by the Agency. The application shall contain the information described in this section and any other information the Agency may reasonably require. Application forms may be obtained in the offices of the \_\_\_ Town Clerk or the Agency.
- 7.2 If an application to the Town of \_\_\_\_\_ Planning, Zoning, or Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with Section 8-3(g), 8-3c, or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Agency in accordance with this section, no later than the day the application is filed with such planning, zoning, or planning and zoning commission.
- 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Agency.



7.4 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.

7.5 All applications shall include the following information in writing or on maps or drawings:

- a. the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation the managing member's or responsible corporate officer's name, address, and telephone number;
- b. the owner's name, mailing address and telephone number and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
- c. the applicant's interest in the land;
- d. the geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;
- e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
- f. alternative which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagramed on a site plan or drawing;
- g. a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses;
- h. names and mailing addresses of adjacent land owners;
- i. statement by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
- j. authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit;
- k. a completed DEP reporting form; the Agency shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Environmental Protection in accordance with section 22a-39-14 of the Regulations of Connecticut State Agencies;
- l. any other information the Agency deems necessary to the understanding of what the applicant is proposing; and
- m. submission of the appropriate filing fee based on the fee schedule established in section 19 of these regulations.

7.6 At the discretion of the Agency or its agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, is required:

- a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses,

- and other pertinent features of the land and the proposed activity, prepared by a professional engineer, land surveyor, architect or landscape architect licensed by the state, or by such other qualified person;
- b. engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;
  - c. mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; the wetlands shall be delineated in the field by a soil scientist and the soil scientist's field delineation shall be depicted on the site plans;
  - d. a description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed activity on these communities and wetland functions;
  - e. a description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative which would cause less or no environmental impact to wetlands or watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent;
  - f. analysis of chemical or physical characteristics of any fill material; and
  - g. management practices and other measures designed to mitigate the impact of the proposed activity.

7.7 The applicant shall certify whether:

- a. any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
- b. traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
- c. sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or,
- d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

7.8 \_\_\_\_\_ copies of all application materials shall be submitted to comprise a complete application unless an applicant is otherwise directed, in writing, by the Agency.

7.9 Any application to renew or amend an existing permit shall be filed with the Agency in accordance with section 8 of these regulations at least sixty-five (65) days prior to the expiration date of the permit. Any application to renew or amend such an existing permit shall contain the information required under section 7 of these regulations provided:

- a. the application may incorporate the documentation and record of the prior application;
- b. the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit;
- c. the application shall state the reason why the authorized activity was not initiated or completed within the time specified in the permit;
- d. the application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or use of the land for which the permit was issued;
- e. the Agency may, prior to the expiration of a permit, accept an untimely application to renew such permit if the authorized activity is ongoing and allow the continuation of work beyond

the expiration date if, in its judgment, the permit is likely to be renewed and the public interest or environment will be best served by not interrupting the activity;

- 7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided no permit may be valid for more than ten years.

## **Section 8 Application Procedures**

- 8.1 All petitions, applications, requests or appeals shall be submitted to the \_\_\_\_\_ (name of wetlands agency) of the Town or City of \_\_\_\_\_.

OR

All petitions, applications, requests or appeals shall be submitted to the clerk of the Town or City of \_\_\_\_\_ who shall act as agent of the \_\_\_\_\_ (name of the wetlands agency) for the receipt of such petition, application, request or appeal.

- 8.2 The Agency shall, in accordance with Connecticut General Statutes section 8-7d(f), notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:
- a. any portion of the property affected by a decision of the agency is within five hundred feet of the boundary of an adjoining municipality;
  - b. a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
  - c. a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or
  - d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, appeal, request or plan.

- 8.3 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 16-1 of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of the application. The water company, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency.
- 8.4 The date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of the Agency, immediately following the day of submission to the

Agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner.

- 8.5 At any time during the review period, the applicant shall provide such additional information as the Agency may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in subsection 11.2 of these regulations.
- 8.6 All applications shall be open for public inspection.
- 8.7 Incomplete applications may be denied.

## **Section 9 Public Hearings**

- 9.1 The inland wetlands agency shall not hold a public hearing on an application unless the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses, a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the inland wetlands agency not later than fourteen days after the date of receipt of such application, or the inland wetlands agency finds that a public hearing regarding such application would be in the public interest. The inland wetlands agency may issue a permit without a public hearing provided no petition provided for in this section is filed with the inland wetlands agency on or before the fourteenth day after the date of receipt of the application. Such hearing shall be held no later than sixty-five days after the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing any person or persons may appear and be heard.
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located.

## **Section 10 Considerations for Decision**

- 10.1 The Agency may consider the following in making its decision on an application:
- a. The application and its supporting documentation
  - b. Reports from other agencies and commissions including but not limited to the Town of \_\_\_\_\_:
    - 1. Conservation Commission
    - 2. Planning, Zoning, or Planning and Zoning Commissions
    - 3. Building Official
    - 4. Health Officer
  - c. The Agency may also consider comments on any application from the \_\_\_\_\_ County Soil and Water Conservation District, the \_\_\_\_\_ Regional Planning Agency or other regional organizations (i.e. Council of Elected Officials); agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.

- d. Non-receipt of comments from state agencies and commissions listed in subdivision 10.1b and c above within the prescribed time shall neither delay nor prejudice the decision of the Agency.
  - e. For an application for which a public hearing is held, public comments, evidence and testimony.
- 10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:
- a. the environmental impact of the proposed regulated activity on wetlands or watercourses;
  - b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.
  - c. the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses.
  - d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
  - e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
  - f. impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses.
- 10.3 In the case of an application which received a public hearing pursuant to a finding by the Agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Agency finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding the Agency shall consider the facts and circumstances set forth in subsection 10.2 of this section. The finding and the reasons therefore shall be stated on the record in writing.
- 10.4 In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the Agency shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity.
- 10.5 For purposes of this section, (1) "wetlands and watercourses" includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.

- 10.6 A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.
- 10.7 In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the Agency in its decision.

## **Section 11**

### **Decision Process and Permit**

- 11.1 The Agency, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources.
- 11.2 No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by agent or attorney. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of the periods specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five (65) days, or may withdraw the application. The failure of the Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the Agency shall be withdrawn by the applicant or denied by the Agency.
- 11.3 The Agency shall state upon its record the reasons and bases for its decision.
- 11.4 The Agency shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten days thereafter.
- 11.5 If an activity authorized by an inland wetland permit also involves an activity which requires a zoning or subdivision approval, special zoning permit, or variance or special exception, under sections 8-3(g), 8-3c, or 8-26 of the Connecticut General Statutes, the Agency shall file a copy of

the decision and report on the application with the Town of \_\_\_ Planning, Zoning, or Planning and Zoning Commission within fifteen days of the date of the decision thereon.

- 11.6 Any permit issued by the Agency for the development of land for which an approval is required under section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Agency for any other activity shall be valid for not less than two years and not more than five years.
- 11.7 No permit issued by the Agency shall be assigned or transferred without the written permission of the Agency.
- 11.8 If a bond or insurance is required in accordance with section 13 of these regulations, the Agency may withhold issuing the permit until such bond or insurance is provided.
- 11.9 General provisions in the issuance of all permits:
- a. The Agency has relied in whole or in part on information provided by the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
  - b. All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of \_\_\_\_, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the subject land or activity.
  - c. If the activity authorized by the Agency's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under sections 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.
  - d. In constructing the authorized activities, the permittee shall implement such management practices consistent with the terms and conditions of the permit as needed to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.
  - e. Permits are not transferable without the prior written consent of the Agency.

## **Section 12**

### **Action by Duly Authorized Agent**

- 12.1 The Agency may delegate to its duly authorized agent the authority to approve or extend a license for an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater that a minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Environmental Protection pursuant to section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.5 of these regulations and any other information the Agency may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 8, 9 and 11 of these regulations, such agent may approve or extend such an activity at any time.

- 12.2 Any person receiving such approval from such agent shall, within ten days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the Agency within fifteen days after the publication date of the notice and the Agency shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such Agency or its agent of such appeal. Any person may appear and be heard at the meeting held by the Agency to consider the subject appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit in accordance with Section 7 of these regulations.

### **Section 13 Bond and Insurance**

- 13.1 The Agency may require as a permit condition the filing of a bond with such surety in such amount and in a form approved by the Agency.
- 13.2 The bond or surety shall be conditioned on compliance with the provisions of these regulations and the terms, conditions and limitations established in the permit.

### **Section 14 Enforcement**

- 14.1 The Agency may appoint an agent or agents to act in its behalf with the authority to issue notices of violation or cease and desist orders and carry out other actions or investigations necessary for the enforcement of these regulations. In carrying out the purposes of this section, the Agency or its duly authorized agent shall take into consideration the criteria for decision under section 10.2 of these regulations.
- 14.2 The Agency or its agent may make regular inspections at reasonable hours of all regulated activities for which permits have been issued with the consent of the property owner or the authorized agent of the owner during the life of the permit.
- 14.3 In the case in which a permit has not been issued or a permit has expired, the Agency or its agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner.
- 14.4 If the Agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the Agency or its duly authorized agent may:
- a. issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the Agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be



- effective upon issuance and shall remain in effect until the Agency affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to section 22a-44(b) of the Connecticut General Statutes, as amended.
- b. issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the Agency, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the unauthorized activity, and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in section 14.3.a or other enforcement proceedings as provided by law.
- 14.5 The Agency may suspend or revoke a permit if it finds that the permittee has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking or suspending any permit, the Agency shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The Agency shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15) days of the date of its decision. The Agency shall publish notice of the suspension or revocation in a newspaper having general circulation in the municipality.

## **Section 15 Amendments**

- 15.1 These regulations and the Inland Wetlands and Watercourses Map for the Town of \_\_\_ may be amended, from time to time, by the Agency in accordance with changes in the Connecticut General Statutes or regulations of the Connecticut Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available.
- 15.2 An application filed with the Agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetland regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of such Agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.
- 15.3 These regulations and the Town of \_\_\_ Inland Wetlands and Watercourses Map shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments, at least thirty-five days before the public hearing on their adoption.

(Note: Application fee schedules shall be adopted as Agency regulations or as otherwise provided by town ordinance.)

- 15.4 Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, \_\_\_\_\_, Connecticut, shall contain at least the following information:
- a. the petitioner's name, mailing address and telephone number;
  - b. the address, or location, of the land affected by the petition;
  - c. the petitioner's interest in the land affected by the petition
  - d. map(s) showing the geographic location of the land affected by the petition and the existing and the proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations; and
  - e. the reasons for the requested action.
- 15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, \_\_\_\_\_, Connecticut, shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in subsection 15.4, the petition shall include:
- a. the name, mailing address and telephone number of the owner(s) of such land and owner(s) agent or other representative;
  - b. the names and mailing addresses of the owners of abutting land;
  - c. documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and defining the boundaries of wetland soil types; and
  - d. map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.
- 15.6 Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.
- 15.7 A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having a general circulation in the municipality where the land that is the subject of the hearing is located at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date set for the hearing. All materials including maps and documents relating to the petition shall be open for public inspection.
- 15.8 The agency shall hold a public hearing on a petition to amend the regulations and the Inland Wetlands and Watercourses Map within sixty-five days after receipt of such petition. The hearing shall be completed within thirty-five days after commencement. The agency shall act upon the changes requested in such petition within sixty-five days after completion of such hearing. At such hearing, any person or persons may appear and be heard and may be represented by agent or attorney. The petitioner may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for

longer than sixty-five days, or may withdraw such petition. Failure of the agency to act within any time period specified in this subsection or any extension thereof, shall not be deemed to constitute approval of the petition.

- 15.9 The Agency shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.

### **Section 16 Appeals**

- 16.1 Appeal on actions of the Agency shall be made in accordance with the provisions of section 22a-43 of the Connecticut General Statutes, as amended.
- 16.2 Notice of such appeal shall be served upon the Agency and the Commissioner of Environmental Protection.

### **Section 17 Conflict and Severance**

- 17.1 If there is a conflict among the provisions of these regulations, the provision which imposes the most stringent standards for the use of wetlands and watercourses shall govern. The invalidity of any word, clause, sentence, section, part, subsection, subdivision or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.
- 17.2 If there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall govern.

### **Section 18 Other Permits**

- 18.1 Nothing in these regulations shall obviate the requirements for the applicant to obtain any other assents, permits or licenses required by law or regulation by the Town of \_\_\_\_\_, the State of Connecticut or the Government of the United States including any approval required by the Connecticut Department of Environmental Protection and the U.S. Army Corps of Engineers. Obtaining such assents, permits or licenses is the sole responsibility of the applicant.

### **Section 19 Fees**

- 19.1 Method of Payment. All fees required by these regulations shall be submitted to the Agency by certified check or money order payable to the Town of \_\_\_\_\_ at the time the application is filed with the Agency.
- 19.2 No application shall be granted or approved by the Agency unless the correct application fee is paid in full or unless a waiver has been granted by the Agency pursuant to subsection 19.7 of these regulations.

19.3 The application fee is not refundable.

19.4 Definitions. As used in this section:

"Residential Uses" means activities carried out on property developed for permanent housing or being developed to be occupied by permanent housing.

"Commercial uses" means activities carried out on property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.

"Other uses" means activities other than residential uses or commercial uses.

19.5 Fee Schedule. Application fees shall be based on the following schedule:

a. Regulated Activities:

Residential Uses.....\$XX.XX Plus \$XX.XX/LOT  
Plus Fee from Schedule A

Commercial Uses.....\$XX.XX  
Plus Fee from Schedule A

All Other Uses .....\$XX.XX  
Plus Fee from Schedule A

Approval by Duly Authorized Agent.....\$XX.XX

Appeal of Duly Authorized Agent  
Decision.....\$XX.XX

Significant Activity Fee.....\$XX.XX

Public Hearing Fee.....\$XX.XX

Complex Application Fee.....The Inland Wetlands Agency may charge an additional fee sufficient to cover the cost of reviewing and acting on complex applications. Such fee may include, but not be limited to, the cost of retaining experts to analyze, review, and report on issues requiring such experts. The Agency or the duly authorized agent shall estimate the complex application fee which shall be paid pursuant to section 19.1 of these regulations within 10 days of the applicant's receipt or notice of such estimate. Any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than 30 days after publication of the agency's decision.

b. Permitted and Nonregulated Uses :

Permitted Uses as of Right .....\$XX.XX

Nonregulated Uses .....\$XX.XX

- c. Regulation Amendment Petitions.....\$XX.XX  
(Does not include Notices or Regulation Advisories from DEP)
- d. Map Amendment Petitions: .....\$XX.XX  
Plus Fee from Schedule B
- e. Modification of Previous Approval:.....\$XX.XX  
Renewal of Previous Approval.....\$XX.XX
- f. Monitoring Compliance Fee.....\$XX.XX

SCHEDULE A. For the purpose of calculating the permit application fee, the area in schedule A is the total area of wetlands and watercourses and the upland review area upon which a regulated activity is proposed.

SQUARE FEET of AREA

- a. Less than 1,000.....\$XX.XX
- b. 1,000 to 5,000....."a" plus.....\$XX.XX
- c. More than 5,000...."b" plus.....\$XX.XX

SCHEDULE B. For the purpose of calculating the map amendment petition fee, linear feet in schedule B is the total length of wetlands and watercourses boundary subject to the proposed boundary change.

LINEAR FEET

- a. Less than 500 ..... \$XX.XX
- b. 500 to 1,000....."a" plus ..... \$XX.XX
- c. More than 1,000..."b" plus..... \$XX.XX

19.6 Exemption. Boards, commissions, councils and departments of the Town of \_\_\_ are exempt from all fee requirements.

19.7 Waiver. The applicant may petition the Agency to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this subsection. The Agency may waive all or part of the application fee if the Agency determines that:

- a. The activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or
- b. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
- c. The applicant has shown good cause.

The Agency shall state upon its record the basis for all actions under this subsection.

**Section 20**  
**Effective Date of Regulations**

20.1 These regulations are effective upon filing in the Office of the Town Clerk and publication of a notice of such filing in a newspaper having general circulation in the Town of \_\_\_\_\_.

## APPENDIX A

### Connecticut General Statute section 1-1(q)

Except as otherwise specifically defined, the words “agriculture” and “farming” shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other mulluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.

## APPENDIX B

### Connecticut General Statute section 8-7d

**Hearings and decisions. Time limits. Day of receipt. Notice to adjoining municipality.** (a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for notice to persons who own or occupy land that is adjacent to the land that is the subject of the hearing. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered within sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever the approval of a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such site plan shall be rendered within sixty-five days after receipt of such site plan. Whenever a decision is to be made on an application for subdivision approval under chapter 126 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. Whenever a decision is to be made on an inland wetlands and watercourses application under chapter 440 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed sixty-five days or may withdraw such plan or application.

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.



(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning or planning and zoning commission regarding adoption or change of any zoning regulation or boundary.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(f) The zoning commission, planning commission, zoning and planning commission, zoning board of appeals or inland wetlands agency shall notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, appeal, request or plan.

**APPENDIX C**

Guidelines, Upland Review Area Regulations  
Connecticut's Inland Wetlands & Watercourses Act



**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

79 Elm Street  
Hartford, CT 06106-5127

**Sidney J. Holbrook**  
Commissioner

**GUIDELINES  
UPLAND REVIEW AREA REGULATIONS  
CONNECTICUT'S INLAND WETLANDS &  
WATERCOURSES ACT**

June, 1997

Wetlands Management Section  
Bureau of Water Management



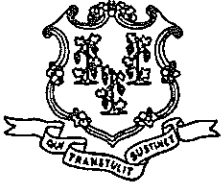
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Cover Picture From: Forested Wetlands/Functions, Benefits and the Uses of Best Management Practices, U.S.D.A. Forest Service.

(Printed on Recycled Paper)



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Municipal Inland Wetland Agencies

From: Charles E. Berger, Director  
Inland Water Resources Division

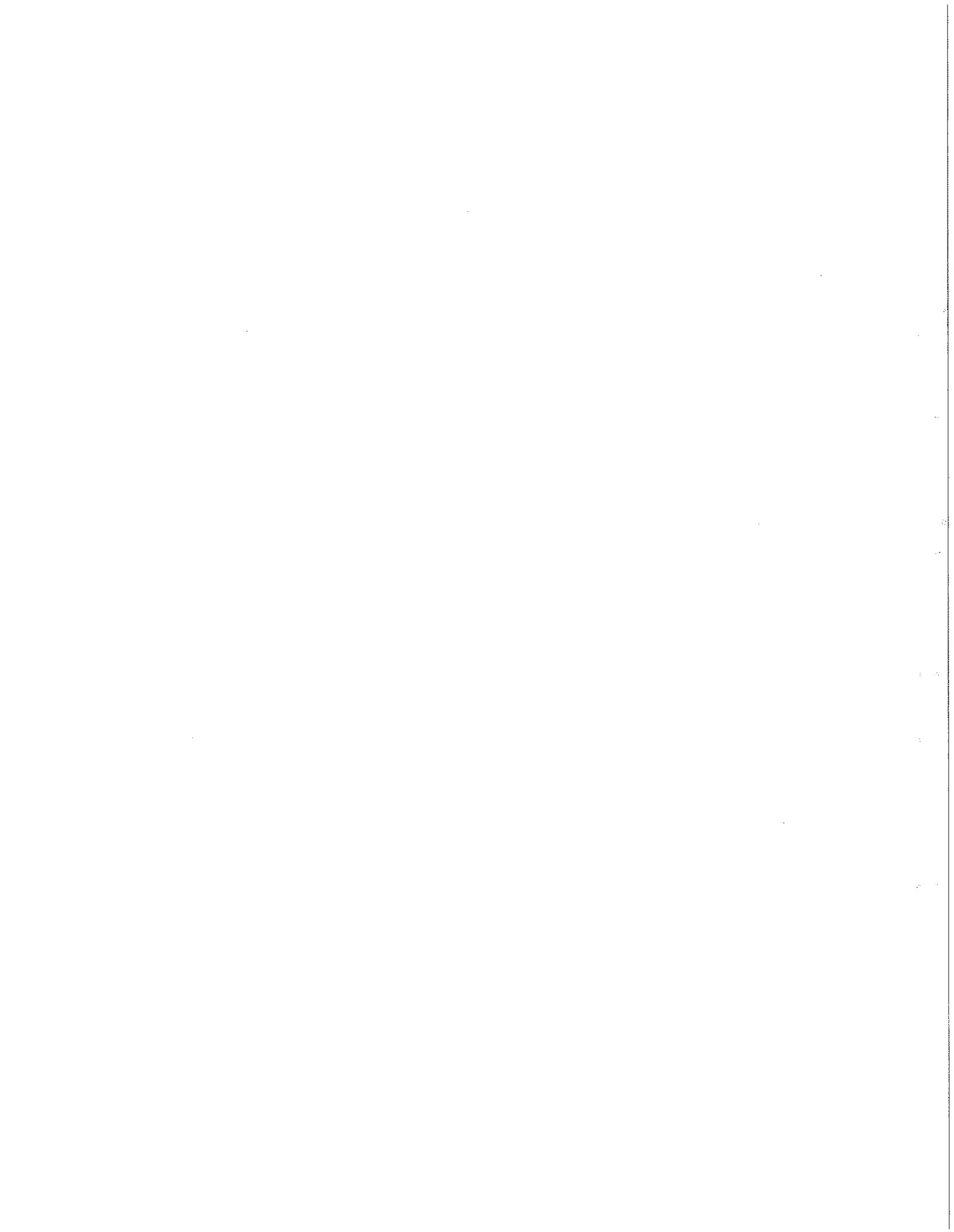
A handwritten signature in cursive script, appearing to read "Charles E. Berger".

Date: June 30, 1997

Under the Inland Wetlands and Watercourses Act, Connecticut's municipalities regulate proposed development activities in or affecting wetlands and watercourses. In support of the municipal wetland agencies, DEP's Wetlands Management Section provides a comprehensive Wetlands Management Training Program for wetland agency commissioners and *Model Regulations* for local inland wetland programs. *Guidelines for Upland Review Area Regulations* was published in accordance with sections 22a-42(d) and 22a-42a(f) of the General Statutes to assist Connecticut's inland wetland agencies in developing and implementing municipal regulations for activities proposed on uplands around wetlands or watercourses.

The guide was drafted in response to inquiries from wetland agency members, river management groups, the regulated community, and other interest persons, for guidance in implementing what are popularly called buffer or setback provisions in wetland regulations. The guide uses the term upland review area to describe the non-wetland or non-watercourse area in which certain types of activities, as defined in municipal regulations, are regulated activities. Other terms for describing this area are used in municipal regulations. We selected the term upland review area because it best conveys the regulatory scheme under the inland wetlands statutes wherein a wetland agency reviews regulated activities case-by-case and approves or disapproves them on their merits.

For further information about DEP's Inland Wetlands Management Programs, please call (860) 424-3019.



# Guidelines for Upland Review Area Regulations Under Connecticut's Inland Wetlands and Watercourses Act

## Wetlands and Uplands: an Introduction

The relationship between a wetland or watercourse and its surrounding upland is complex. Upland land clearing, excavating, filling and other construction activities if not properly planned and executed can have significant impacts on adjacent wetlands and watercourses. Under the Inland Wetlands and Watercourses Act, the municipal wetlands agency has broad authority to issue permits not only for activities in wetlands or watercourses themselves, but for activities located elsewhere when such activities are likely to impact or affect wetlands or watercourses. *It is the department's policy to encourage municipal wetland agencies to review proposed activities located in upland areas surrounding wetlands and watercourses wherever such activities are likely to impact or affect wetlands or watercourses.*<sup>1</sup>

An understanding of how certain activities in upland areas affect wetlands and watercourses has led most towns to adopt regulations requiring wetland agency review of proposed development adjacent to wetlands and watercourses.<sup>2</sup> Such regulations are optional under the Act, but serve to inform the public as to the circumstances under which a wetlands permit is required of activities proposed adjacent to a wetland or watercourse.<sup>3</sup>

While requiring a permit for specified activities within defined *upland review area boundaries*, these wetland agencies still maintain their authority to regulate proposed activities located in more distant upland areas if they find that the activities are likely to impact or affect a wetland or watercourse.

The purpose of these guidelines is to assist municipal wetlands agencies to review and revise their wetlands and watercourses regulations, if necessary. As such, the guidelines provide a foundation for consistency in municipal regulations and permitting activities. They are not intended to substitute for reasoned evaluation and judgement by municipal wetlands agencies of the local wetland and watercourse resources, the conditions surrounding those resources, and the types of activities which are likely to impact or affect those resources. Nor are they intended to guide wetlands agencies through the decision making process for acting on permits. Both these topics are more appropriately addressed in detail through the department's Inland Wetlands Management Training Program for wetland agency commissioners and their staff. Wetlands agencies are reminded that they should review proposed changes in their inland wetlands and watercourses regulations with their town attorney.

## Model Municipal Upland Review Area Regulations

In addition to implementing the law to protect wetlands and watercourses, regulations inform the public on what to expect if one proposes an activity in or affecting a wetland or watercourse in the subject town. Upland review area regulations reduce or eliminate the need for case-by-case rulings by providing notice as to what activities need wetland permits. By specifying where a permit is required, such regulations foster consistency and are convenient for the public. In determining the boundaries for its upland review area regulations, the wetland agency should consider the specific kinds of development activities on uplands which are likely to impact or affect wetlands and watercourses and the nature of that impact or affect.

An upland activity which is likely to impact or affect wetlands or watercourses is a *regulated activity* and should be identified as such in the regulations. In identifying upland review area regulated activities, the wetlands agency must apply the standard established under section 22a-42a(f) of the General Statutes and find that the activity is "... likely to impact or affect wetlands or watercourses."<sup>4</sup> Examples of upland regulated activities are included in the models below. In implementing its upland review area regulations, the wetland agency must be cognizant that certain proposed activities, which are permitted uses as of right or as nonregulated uses under section 22a-40 of the General Statutes, are not regulated and do not require a permit from the wetlands agency under the Inland Wetlands and Watercourses Act.

There are a number of ways that the boundaries of an upland review area may be defined in regulations. In selecting its approach, the wetland agency should consider the special nature of their town's wetland and watercourse resources, the purposes and intent of the Inland Wetlands and Watercourses Act, and how the regulations will be implemented.

Three models for upland review area regulations are presented below. The first model provides that certain specified activities if conducted within a specified distance measured from *any* wetland or watercourse are regulated activities. As such, the first model is the basic model and easiest to implement. The second model expands upon that basic model by identifying specific wetland and watercourse resources of special concern and providing site specific review area widths for those resources. This model should be used where the wetland agency believes additional protection though a wider review area is needed or to take existing land development or uses into account with a narrower review area. The third model adds to the basic model a slope and soil factor in determining the site specific width or location of the upland review area. The first and second models are easily understood and implemented, while the third is technically complex and not easily implemented without trained staff.

Note that the first sentence of each model definition below is the definition of the term *regulated activity* taken from section 22a-38(13) of the Inland Wetlands and Watercourses Act and, as such, its meaning may not be changed in municipal inland wetlands regulations.



## *Model Regulation Options<sup>5</sup>*

Model I. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within \_\_\_\_\_ feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Model II. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within the following upland review areas is a regulated activity:

- (1) within \_\_\_\_\_ feet measured horizontally from the ordinary high water mark<sup>6</sup> of Town Lake, Smith Lake or Pine Meadow Pond;
- (2) within \_\_\_\_\_ feet measured horizontally from the ordinary high water mark of Ledge Brook and of Big Trout Brook between the Route 51 and Main Street Bridges over Big Trout Brook.
- (3) within \_\_\_\_\_ feet measured horizontally from the boundary of the wetlands comprising Great Swamp;
- (4) within the area enclosed by the \_\_\_\_\_ foot contour elevation surrounding Ice Pond Bog; such contour is depicted on the Inland Wetlands and Watercourses Map for the Town of \_\_\_\_\_;
- (5) within \_\_\_\_\_ feet measured horizontally from the boundary of any other wetland or watercourse.

The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Model III. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the

specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water in the following areas is a regulated activity:

- (1) on land within \_\_\_\_ feet measured horizontally from the boundary of any wetland or watercourse, provided
- (2) if the slope of such land exceeds 5%,<sup>7</sup> within the distance measured horizontally from the boundary of the wetland or watercourse equal to \_\_\_\_ feet plus an additional 5 feet for each 1% increase in slope greater than 5%, but not more than \_\_[e.g., 200]\_\_ feet;
- (3) on land designated on the Inland Wetlands and Watercourses Map of the Town of \_\_\_\_\_ as containing highly erodible soils.

The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

## Considerations in Establishing Upland Review Areas

### *Regulated Activities*

The Inland Wetlands and Watercourses Act (Sections 22a-36 through 22a-45a of the General Statutes) defines *regulated activity* to mean:

*“... any operation within or use of a wetland or watercourse involving the removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes.”<sup>8</sup>*

In addition to activities located in a wetland or watercourse, any activity located in a non-wetland or non-watercourse area which is likely to impact or affect a wetland or watercourse may be deemed to be a regulated activity (unless the activity is a use permitted as of right or as a nonregulated activity). However, the likelihood of an activity having a substantive impact on a wetland or watercourse will depend on a number of factors, including the nature of the wetland or watercourse, the activity, soils and slope of the land, and would generally decrease with increasing distance of the activity from the wetland or watercourse. At some point, impacts from that activity on wetlands and watercourses would be expected to become de minimis and not measurable.

The DEP believes that a 100 foot-wide upland review area is sufficient for reviewing construction

activities in areas surrounding wetlands or watercourses because most of the activities which are likely to impact or affect these resources will be located in that area. However, based on the special factors of concern to a wetlands agency, e.g., wetland and watercourse values, slope, soils, existing development, etc., a greater or lesser distance may be appropriate for a particular municipality. However, beyond 100 feet it is neither practical nor desirable, from a wetlands and watercourses management perspective, to automatically require an inland wetlands permit for *all* construction activities. It must be emphasized that other municipal authorities and mechanisms involving planning, zoning and subdivision decisions and plans of conservation and development, play a role in addressing the broader watershed issues.

### *Upland Review Areas, Setbacks and Buffers*

In a number of municipal inland wetlands regulations, upland review areas are referred to as setbacks or buffers.<sup>9</sup> We chose the term *upland review area* to describe the non-wetland or non-watercourse area in which certain activities would be regulated because it best conveys the regulatory scheme under the wetlands statutes wherein a wetland agency reviews regulated activities case-by-case and approves or disapproves them on their merits. The inland wetland statutes do not authorize a blanket prohibition of *all* activities either in the wetlands or in upland review, buffer or setback areas.

### *Use of Upland Review Area Regulations*

Most municipal wetland agencies have already adopted some form of upland review area regulations.<sup>10</sup> Such regulations are based on a presumption that the regulated activity will have an adverse impact on the adjacent wetland or watercourse. A person proposing to conduct a regulated activity has the burden to demonstrate to the wetlands agency that the impacts of his proposal are consistent with the purposes and provisions of the Inland Wetlands and Watercourses Act and, therefore, that he is entitled to the permit. An applicant who successfully documents to the satisfaction of the wetlands agency that his proposed activities are fully consistent with the purposes and provisions of the Inland Wetlands and Watercourses Act is entitled to receive a permit. The factors the wetlands agency must consider in making its decision on the application are prescribed in section 22a-41 of the General Statutes.<sup>11</sup>

### *The Role of the Upland Review Area in Protecting Wetlands and Watercourses*

Upland areas surrounding wetlands or watercourses function in a number of ways to protect these resources. An understanding of these functions and how they potentially may be impacted by construction activity or development is necessary for the wetlands agency to adopt an upland review area and subsequently regulate activities therein. Since the functions will vary depending on the specific project site, each permit application will be different and must be reviewed on its individual merits.

### Control Non-point Source Pollution

- \*Vegetation and natural soils foster removal of nutrients, sediments, particulates, and other potential pollutants and pathogens from storm-water runoff thereby protecting water quality
- \*Sediments arising from road sanding and construction activities are trapped
- \*Flood flows, stream bank erosion, and storm-water discharges to wetlands and watercourses are attenuated
- \*Separating distances from wetlands or watercourses allow for treatment of wastewaters

### Protect Aquatic Habitat

- \*Wind-thrown trees, dropped branches and detritus create important habitat for aquatic organisms within watercourses
- \*Stabilize under cutting stream banks, providing shelter for fish and other aquatic organisms
- \*Riparian areas are an essential component of habitat and for mammals, birds, amphibians, reptiles, invertebrates and other wetland animals
- \*Watercourses are allowed to meander naturally without endangering development

### Control Temperature

- \*Shrubs and trees shade wetlands and watercourses and help maintain cold water aquatic habitats in summer and insulate them from deep frost in winter
- \*Water temperatures suitable for fish spawning and egg and fry development are maintained
- \*Cooler water supports higher dissolved oxygen

### Provide Food for Aquatic Life

- \*Decomposing leaves and detritus contribute to the food chain, especially of aquatic insects
- \*Insects falling from branches feed fish and other aquatic life

### Insulate Fish and Wildlife From Human Activities

- \*Potential for human interference with fish and wetland wildlife is reduced

### Provide a Corridor Linking Wetlands and Watercourses

- \*Wildlife habitats are continuous, not fragmented or isolated, allowing for migratory habits of wetland wildlife

### *Examples of Regulated Activities in Upland Review Areas and Their Potential Wetland or Watercourse Impacts*

Keep in mind that the substance and significance of an impact will vary from site to site and may decrease with increasing distance from the wetland or watercourse.

#### Clearing, grubbing and grading

- \*Loss of stream shading
- \*Increased surface water temperature
- \*Loss of food source for aquatic organisms
- \*Loss of riparian habitat/diminished in stream habitat value
- \*Increased storm-water runoff
- \*Reduced capacity to remove nutrients and other impurities from runoff
- \*Soil erosion/sedimentation
- \*Destabilization of stream banks
- \*Increased disturbance of aquatic and wetland animals
- \*Release of nutrients bound in the soil
- \*Loss of instream habitat diversity from wind-thrown trees and branches

#### Paving

- \*Increased storm-water runoff/discharge
- \*Decreased ground-water recharge, reduced stream flow during dry seasons
- \*Non-point source of water pollution, including petroleum products from motor vehicles
- \*Source of sand and grit from storm water discharges
- \*Disruption of fish spawning and fish-egg incubation
- \*Periodic disturbance from maintenance of storm-water management system
- \*Thermal loading in watercourses

#### Excavating

- \*Soil erosion/sedimentation
- \*Altered surface and ground-water discharge patterns and quantity

- \*Diversion or dewatering of wetland/watercourse
- \*Destabilization of watercourse channels

### Filling

- \*Diversion of surface water drainage/dewatering
- \*Loss of flood-water storage
- \*Increased flooding or flood hazards
- \*Increased stream erosion
- \*Erosion of fill material
- \*Sedimentation

### Constructing

- \*Soil erosion/deposition
- \*Disturbance of adjacent fish and wildlife habitats
- \*Increased non-point sources of water pollution
- \*Fragmentation of wetland/watercourse habitats

### Depositing material

- \*Erosion/loss of material into regulated area
- \*Leaching/pollution potential
- \*Disturbance of adjacent aquatic habitats
- \*Alteration of riparian habitats
- \*Other impacts similar to filling and constructing

### Removing material

- \*Discharge/loss of material to regulated area
- \*Modification of riparian habitats
- \*Surface drainage changes
- \*Other impacts similar to clearing, grubbing or grading

### Discharging storm water

- \*Water quality - discharge of road sands/grit; oils; grease
- \*Water quantity - flow attenuation; velocity dissipation
- \*Erosion/sedimentation
- \*Assimilation of potential pollutants
- \*Change in receiving stream water temperature
- \*Increase velocity of runoff and decrease travel time to the receiving watercourse
- \*Nuisance flooding

### ***Determining Upland Review Area Boundaries***

Due to the variability of Connecticut's landscape features, even within the same watershed, and the multiplicity of regulated activities which may be involved in site development, it is not practical to establish separate upland review area boundary distances *for each category or type of regulated activity*. Instead, the upland review area should be of sufficient width to ensure that it will encompass the activities that are most likely to impact or affect the adjacent wetlands or watercourses. It is recommended that upland review area boundaries be delineated using a uniform distance measured horizontally and perpendicular from the ordinary high water mark of a lake, pond, river or stream or from a wetland soil boundary.

The upland review area width adopted by the wetlands agency may be wider or narrower than the 100 foot width recommended by DEP. DEP encourages municipal wetlands agencies base their upland review area widths giving due consideration to local landscape factors including the value, or importance, of wetland or watercourse resources, extent of existing land use and, if a wetland agency deems it to be practicable, on the slope and soils of the land to be developed or other factors.

To be enforceable, the upland review areas must be adopted in the town's inland wetlands and watercourses regulations following the procedures described under section 22a-42a of the General Statutes.<sup>12</sup> Importantly, the upland review area regulations must be easy to understand by a property owner and easy to implement by the inland wetlands agency (should it need to take an enforcement action), as well as by any other interested person.

A uniform review area width has the advantage of simplicity over a variable width in that it is easier to delineate, understand and administer. The disadvantage of a variable, non-uniform, width upland review area regulation is that its inherent complexity may make the regulation difficult to establish and subsequently administer. Ordinarily, the agency will need a professional staff person to delineate and enforce variable upland review area regulations. Also, citizens may be confused using a variable approach and disagreements over the actual location on the ground of the outer limit of the upland review area may complicate permit and enforcement proceedings. Verification of the upland review area location is particularly important in an enforcement action where the burden is on the agency to prove that there is a violation of its regulations. For these reasons, the department urges caution in adopting complex upland review area boundaries (e.g., Model Option III, above).

While it is desirable for upland review areas to be depicted on the town's official inland wetlands and watercourses map, depending on the type of review area adopted, actual mapping may not be necessary provided appropriate narrative description is included in the town's inland wetlands and watercourses regulations and such provisions *are clearly referenced on the official map*. Wetlands agency regulations governing wetlands maps and the official wetlands maps themselves should state that such wetlands and watercourses maps were prepared for information purposes only and that the actual character of the land shall govern the agency's jurisdiction thereon. The

official wetlands and watercourses maps should also clearly reference or depict all upland review areas which have been adopted by the agency.

### Boundary Factors

There are a number of factors which should be considered in defining upland review area boundaries. For unique situations, such as with an important bog, the boundary of the review area could be set by using an elevation contour encompassing the subject area. In addition, upland review areas may be wider or narrower for specified wetlands or watercourses. For example, an upland review area for a significant wetland or watercourse habitat or for wetlands and watercourses located in a public water supply watershed could be set wider than a review area for wetlands or watercourses located in other less critical areas.

#### \* Significant Wetland and Watercourse Resources

All wetlands have intrinsic value, some wetland areas being more or less ecologically valuable than others. But if a wetland or watercourse is known to be ecologically significant, or to have a critical function or value such as in flood control or as habitat for an endangered species, a wider, more protective, upland review area may be appropriate. Unique wetland and watercourse values such as in research, education or recreation may also warrant a wider upland review area.

DEP encourages all towns to evaluate their wetlands resources. To that end, DEP offers training guidance on a methodology for identifying the relative importance of the wetlands and watercourses in a town or within a watershed. (See: DEP Bulletin # 9 *Method for the Evaluation of Inland Wetlands in Connecticut*, 1989<sup>13</sup>) This methodology uses mathematical and word expressions to assign relative "wetland value units" (WVU) to a number of the common wetland and watercourse functions. The following functions are defined in DEP Bulletin #9:

- Flood Control
- Ecological Integrity
- Wildlife Habitat
- Fish Habitat
- Nutrient Retention and Sediment Trapping
- Education Potential
- Visual/Esthetic Quality
- Agricultural Potential
- Forestry Potential
- Water Based Recreation
- Ground-water Use Potential
- Shoreline Anchoring and Dissipation of Erosive Forces
- Noteworthiness, including public water supply watersheds



In addition, guidance on vernal pools is provided in a recent publication by the Connecticut Forest Stewardship Program and the University of Connecticut Cooperative Extension System titled *Identification and Protection of Vernal Pool Wetlands of Connecticut*. Both of the above referenced publications are available from the DEP Bookstore, 79 Elm Street, Hartford, phone 860-424-3555.

#### \* Slope

By enlarging the width of the upland review area in proportion to its slope upward from the wetland or watercourse, the wetland agency may have a better opportunity to protect wetlands and watercourses from sedimentation originating from upland construction activities. For example, wherever the minimum 100 foot upland review area slope exceeds 5%, regulations could add 5 feet (or other reasonable measure) of review area distance *horizontally* for each 1% increase in slope. Thus, if the basic 100 foot wide review area has a 15% slope upward from the ordinary high water line or wetland soil boundary, an additional 50 feet would be added to the horizontal width of the upland review area ( $5\text{ft}/1\% \times 10\% = 50\text{ft}$ ). Similarly, where the land slopes away (downward) from the regulated area, e.g., as in the case of a hill-side seep wetland, the width of the review area could be reduced.

In general, the greater the slope of the land being developed, the greater the potential threat of damage to adjacent wetlands and watercourses from erosion and sedimentation. However, in practice, unless a town already has good town-wide topographic mapping, calculating a slope parameter for a town-wide map of the upland review area boundary would require considerable professional engineering expertise.

A practical approach to using the slope factor may be for wetland agencies to assert their jurisdiction case-by-case over major construction activities on any steeply sloped areas located outside the upland review area where wetlands and watercourses may be threatened by sedimentation caused by erosion at upland construction sites. Such sedimentation is deemed to be pollution and may be cause for an enforcement action under the inland wetlands statutes (see definition of regulated activity above).

#### \* Soils

Combined with slope, the type of soil found adjacent to wetlands and watercourses is an important factor in how development may affect adjacent wetlands or watercourses. Soil characteristics such as texture, cohesiveness and organic content influence the creation of rill and gully formation as a result of erosion by water. In turn, this creates a potential for sedimentation of adjacent wetlands and watercourses. The United States Department of Agriculture, Natural Resources Conservation Service, has compiled lists of highly erodible soil map units which can be located using their published soil surveys. While these lists were compiled primarily for agricultural applications, they may also be useful in evaluating the erosion potential from construction activity.

Also, the permeability of a particular soil, the rate at which groundwater travels through a soil, is an important consideration when evaluating the potential for an upland review area to renovate wastewater discharges to the ground water that may subsequently discharge to a wetland or watercourse. This may be an important consideration when septic system leaching fields or storm water infiltration trenches are proposed adjacent to wetlands or watercourses.

For more information on highly erodible soils, refer to *Highly Erodible Soil Map Units of Connecticut*, USDA-NRCS (1986). For more information on soil permeability characteristics, contact your local USDA-Natural Resource Conservation Service Center (call 860-487-4011 for the center near you). Information on ground-water as it relates to sewage treatment can be found in *Seepage and Pollutant Renovation* (DEP Bulletin # 7) and *Carrying Capacity of Public Water Supply Watersheds* (DEP Bulletin # 11).

Except when soils are used to define wetlands, regulation of development based on soil characteristics is largely a responsibility of the town sanitarian and the planning and zoning commission(s).<sup>14</sup> However, where highly erodible soils are located adjacent to wetlands and watercourses, erosion and sedimentation control is especially critical and should also be addressed by the wetland agency.

Upland review area boundaries based on soil characteristics should be depicted as such on the official inland wetlands and watercourses map for the subject town.

#### \* Floodplain Limits

The landward boundary of a mapped floodplain, such as delineated by the 100-year flood mapped by the National Flood Insurance Program, has been determined using a theoretical design flood on the subject watercourse. Mapped flood limits have no direct relation to the location of wetlands or smaller watercourses on the floodplain. Also, the floodplain boundaries for most small watercourses have not been mapped. For these reasons, flood insurance floodplain maps may not reflect a reasonable boundary of the upland review area.

#### \*Urban Areas and Existing Development

Existing development of the area surrounding wetlands and watercourses has, more likely than not, already had an impact on the upland area's ability to protect those resources. Degraded conditions should not be used to justify further degradation. The wetlands or watercourses themselves may have been filled or modified for storm water or flood control. For these reasons any remaining fringe of undisturbed area between the wetland or watercourse and existing upland development may be all that there is to buffer adjacent water resources from further degradation from new development. In such urban areas, particular attention should be given to how storm water discharges are managed so as to minimize the opportunity for pollution and alteration of wetland or watercourse habitats.

New development in urban areas that contain degraded wetlands or watercourses, may provide an opportunity to improve these degraded resources while mitigating the impact of the new development. This can be accomplished by habitat restoration or enhancement or by using storm water management system retrofits that are designed to improve the quality of the storm water discharge.

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## Endnotes

1. This document was prepared in response to inquiries from municipal wetland commissioners, the Rivers Advisory Committee, the regulated community and other interested persons for guidance on implementing setback and buffer provisions in municipal regulations adopted under Connecticut's Inland Wetlands and Watercourses Act. Section 22a-42d of the General Statutes directs the department to provide guidance for the implementation of Section 22a-42a(f) of the General Statutes.
2. Over 80% of Connecticut's municipal wetlands agencies have regulations governing regulated activities in areas surrounding wetlands or watercourses.
3. Section 22a-42a(c)(2) of the General Statutes provides that a wetlands agency may delegate approval authority for non-significant activities proposed in upland review areas to its agent provided such agent has had DEP training.
4. Section 22a-42a(f) provides that the wetlands agency has jurisdiction over those activities proposed in the upland review area which are "... likely to impact or affect wetlands or watercourses." In documenting the necessity for regulating specific activities conducted in upland review areas, it is not sufficient to merely assert that the activity "may" impact or affect wetlands or watercourses.
5. Contact DEP for a copy of *Inland Wetlands and Watercourses Model Regulations*. DEP's *Model Regulations* provide a comprehensive guide for implementing the Inland Wetlands and Watercourses Act through municipal wetland agency regulations. *Model Regulations* is updated as needed to reflect current legislation.
6. "Ordinary high water mark" means a mark on the land caused by the presence and action of water, which presence and action is so common and usual and so long continued in all ordinary years so as to mark upon the land a distinction between the abutting upland and the watercourse. Such mark may be found by examining the bed and bank of any watercourse and ascertaining thereon an abrupt change in the characteristics of soil or vegetation or slope of the land. This term should be defined in municipal wetlands regulations.
7. Percent slope is most simply determined by dividing the difference in elevation between two points by the distance between the points (i.e., rise/run) and multiplying the result by 100. If a slope factor is used in regulations, the regulations must provide guidance as to how the slope should be measured in the field e.g., on shortest straight line transect from any wetland or watercourse boundary to the highest up gradient point on the land to be developed; number and location of transects; and, in recognition that

the actual slope of the land is not uniform, methods for averaging of slope over a site.

8. In implementing upland review area regulations, the wetlands agency must be cognizant of the "uses as of right" provisions of section 22a-40 of the General Statutes. Under section 22a-40, certain activities are uses of wetland and watercourses as of right or as a nonregulated use. Such uses are not regulated and do not require a permit from the wetland agency. For example, subdivision (4) of section 22a-40(a) prescribes that certain "... uses incidental to the enjoyment and maintenance of residential property ..." are permitted as of right: "[s]uch uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse or diversion or alteration of a watercourse." Other uses permitted as of right include certain agricultural and forestry uses, boat anchorage and mooring, certain water company activities and maintenance of drainage pipes which pre-date the regulations. Nonregulated uses include a number of conservation and recreational activities. Persons proposing such uses should seek confirmation from the municipal wetlands agency that their proposed project does not require a permit.

9. DEP has not adopted an upland review area provision for state agency actions because, unlike municipal wetland agencies which have only one opportunity to review a project, DEP has a number of opportunities during both planning and permitting of state agency projects. DEP reviews state agency projects under the Environmental Policy Act (Findings of No Significant Impact, Environmental Impact Statements) and several permit programs under Title 22a and 25 of the General Statutes. As partners in state government, state agencies generally act cooperatively to address environmental issues. Utilizing its technical resources, the State strives to apply site specific best management practices during the different planning and regulatory reviews.

10. Depending on the wetland agency, upland review area widths range from 25 feet up to 650 feet from wetland or watercourse boundaries.

11. Section 22a-41 of the Inland Wetlands and Watercourses Act established the criteria for decision on permit applications as follows: In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- a. the environmental impact of the proposed regulated activity on wetlands or watercourses;
- b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;
- c. the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
- d. irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such

activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

- e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
- f. impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.

Additionally, if the wetlands agency holds a hearing because it found that the subject activity may have a significant impact, the wetlands agency may not grant the permit unless it finds that the activity is acceptable under the criteria listed above and that there is no less environmentally damaging feasible and prudent alternative.

12. Under Section 22a-42a(b) of the General Statutes, the wetlands agency must provide the DEP with a copy of notice of its hearing on proposed regulations and a copy of the proposed regulations no less than 35 days prior to the hearing thereon. DEP must review and approve all proposed wetland agency regulations except proposed map revisions.

13. The methodology described in DEP Bulletin #9 is a resource planning tool intended to be used for town-wide or watershed-wide assessments of wetland resources and is not designed to be used by applicants or wetlands agencies to evaluate the significance of the impact of activities proposed in permit applications.

14. Section 22a-329 of the General Statues provides that regulations adopted by a municipality pursuant to CGS Secs. 8-2 and 8-25 shall require that proper provisions be made for soil erosion and sediment control.

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### Agency Mission

The mission of the Department of Environmental Protection (DEP) is to conserve, improve and protect the natural resources and environment of the State of Connecticut and to do this in a way that encourages the social and economic development of Connecticut while preserving the natural environment and the life forms its supports in a delicate, interrelated and complex balance, to the end that the state may fulfill its responsibility as trustee of the environment for present and future generations. The DEP achieves its mission through regulation, inspection, enforcement and licensing procedures which help control air, land and water pollution in order to protect health, safety and welfare. The Department also improves and coordinates the state's environmental plans, functions and educational programs in cooperation with the federal, regional and local governments, other public and private organizations and concerned individuals, while managing and protecting the flora and fauna for compatible uses by the citizens of the state.



Connecticut Department of

ENERGY &  
ENVIRONMENTAL  
PROTECTION

79 Elm Street • Hartford, CT 06106-5127

[www.ct.gov/deep](http://www.ct.gov/deep)

Affirmative Action/Equal Opportunity Employer

To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield, Bureau Chief *BW*  
Bureau of Water Protection and Land Reuse

Dated: December 16, 2015

Re: 2015 Legislation and Regulation Advisory

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In 2015 the Connecticut General Assembly amended the Inland Wetlands and Watercourses Act (IWWA) with the passage of Public Act No. 15-85; and amended the General Statutes of Connecticut section 8-7d, which the IWWA references, with the passage of Public Act No. 15-68.

Public Act No. 15-85 amends subsection (a) of section 22a-43a of the IWWA. This act makes a number of unrelated changes regarding court procedures and personnel. With regards to the IWWA, by law, someone can appeal to Superior Court from a decision of a municipal inland wetlands agency. Public Act No. 15-85 gives the court more options when disposing of these cases on appeal. The law allows the court to set aside the agency's action or modify it if the action constitutes a taking without compensation. For appeals not involving such a taking, the act allows the court, after a hearing, to reverse, affirm, modify, or return the decision in a manner consistent with the evidence in the record.

The provisions of section 22a-43a(a) of the IWWA, as amended by Public Act No. 15-85, took effect October 1, 2015.

Public Act No. 15-68 amends subsection (a) of section 8-7d of the General Statutes of Connecticut. This act limits the steps certain municipal land use commissions must take to identify owners of property abutting a property that is the subject of a public hearing related to a petition, application, request or appeal to the commission. With regards to municipal inland wetlands agencies, in addition to publishing notices of public hearings in a newspaper, the agency *may* notify property owners directly affected by such matter. The additional notice must be mailed to the persons who own land abutting the property that is the subject of the hearing, provided by posting a sign on the land that is the subject of the hearing, or both. By law, for purposes of giving such additional notice, property owners are those persons listed as the owners on the property tax map or the most recently completed grand list. The act specifies that the municipal inland wetlands agency need not conduct a title search or engage in additional methods to identify abutters to whom they give the additional notice.



The provisions of section 8-7d(a), as amended by Public Act No. 15-68, were effective upon passage. The act was signed by the Governor on June 19, 2015.

Complete copies of both Public Act No. 15-85 and of Public Act No. 15-68 are attached for your information. Newly added language is underlined and deleted language is bracketed. If your municipal inland wetlands agency's regulations follow the Department of Energy and Environmental Protection's (DEEP) Inland Wetlands and Watercourses Model Municipal Regulations Fourth Edition, dated May 1, 2006 (as amended), no revisions to your regulations need to occur. However, the DEEP is aware that many municipal inland wetlands agencies have included in their regulations, per the General Statutes of Connecticut section 8-7d(a), the discretionary notice to abutting property owners. If your municipal inland wetlands agency has done this, please be aware that your regulations need to be revised to reflect Public Act No. 15-68.

Finally, as a reminder, the IWWA establishes a specific timeline for the amendment of municipal inland wetlands agency regulations. The timeline begins when an amendment is proposed. The amendment *and* the notice of the public hearing must be submitted to the Commissioner of DEEP at least 35 days before such hearing on the amendment is held. A public hearing on the amendment must be held within 65 days after the receipt of the amendment proposal, and the hearing must finish within 35 days after it started. The municipal inland wetlands agency must take action on the amendment proposal within 65 days after the hearing ends. Further, the agency must submit the final adopted amendment language to the Commissioner of DEEP not later than 10 days after adoption.

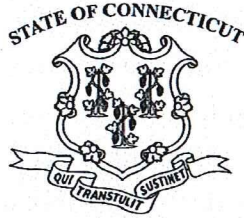
The DEEP's Wetlands Management Section (WMS) has created a dedicated email address for the submission of amendment proposals and final adopted amendment language. Please use: [DEEP.Municipal.Inland.Wetland.Regis@ct.gov](mailto:DEEP.Municipal.Inland.Wetland.Regis@ct.gov). In the subject line of the email you *must* include: the year, town/city name, proposed/adopted regs (e.g., 2015, Town of \_\_\_\_\_, Proposed Regs). Please submit your documents (e.g., regulations, hearing notice, and cover letter) in PDF format. A brief reply email acknowledging receipt of your regulations will be sent to you.

*Attention*, this email address is solely for the submission of municipal inland wetlands agency regulation amendment proposals and final adopted regulations. Other correspondence or requests submitted through this email address will *not* be answered.

If you are unable to submit your regulations electronically, you may continue to mail a paper copy to: Cheryl A. Chase, Director, DEEP Inland Water Resources Division, 79 Elm Street - 3rd Floor, Hartford, CT 06106.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the DEEP's WMS at (860) 424-3019.





**Substitute Senate Bill No. 1033**

**Public Act No. 15-85**

**AN ACT CONCERNING COURT OPERATIONS AND THE CLAIM AGAINST THE STATE OF LORI CALVERT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 7-465 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Any town, city or borough, notwithstanding any inconsistent provision of law, general, special or local, shall pay on behalf of any employee of such municipality, except firemen covered under the provisions of section 7-308, and on behalf of any member from such municipality of a local emergency planning district, appointed pursuant to section 22a-601, all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property, except as set forth in this section, if the employee, at the time of the occurrence, accident, physical injury or damages complained of, was acting in the performance of his duties and within the scope of his employment, and if such occurrence, accident, physical injury or damage was not the result of any wilful or wanton act of such employee in the discharge of such duty. This section shall not apply to

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physical injury to a person caused by an employee to a fellow employee while both employees are engaged in the scope of their employment for such municipality if the employee suffering such injury or, in the case of his death, his dependent, has a right to benefits or compensation under chapter 568 by reason of such injury. If an employee or, in the case of his death, his dependent, has a right to benefits or compensation under chapter 568 by reason of injury or death caused by the negligence or wrong of a fellow employee while both employees are engaged in the scope of their employment for such municipality, such employee or, in the case of his death, his dependent, shall have no cause of action against such fellow employee to recover damages for such injury or death unless such wrong was wilful and malicious or the action is based on the fellow employee's negligence in the operation of a motor vehicle, as defined in section 14-1. This section shall not apply to libel or slander proceedings brought against any such employee and, in such cases, there is no assumption of liability by any town, city or borough. Any employee of such municipality, although excused from official duty at the time, for the purposes of this section shall be deemed to be acting in the discharge of duty when engaged in the immediate and actual performance of a public duty imposed by law. Such municipality may arrange for and maintain appropriate insurance or may elect to act as a self-insurer to maintain such protection. No action for personal physical injuries or damages to real or personal property shall be maintained against such municipality and employee jointly unless such action is commenced within two years after the cause of action therefor arose and written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within six months after such cause of action has accrued. Governmental immunity shall not be a defense in any action brought under this section. In any such action the municipality and the employee may be represented by the same attorney. [if the municipality, at the time such attorney enters his

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appearance, files a statement with the court, which shall not become part of the pleadings or judgment file, that it will pay any final judgment rendered in such action against such employee. No mention of any kind shall be made of such statement by any counsel during the trial of such action.] As used in this section, "employee" includes (1) a member of a town board of education and any teacher, including a student teacher doing practice teaching under the direction of such a teacher, or other person employed by such board, and (2) a member of the local emergency planning committee from such municipality appointed pursuant to section 22a-601. Nothing in this section shall be construed to abrogate the right of any person, board or commission which may accrue under section 10-235.

Sec. 2. Subsection (l) of section 8-8 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(l) The court, after a hearing thereon, may reverse or affirm, wholly or partly, or may [modify or revise the decision appealed from. If a particular board action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the board decision or orders the particular board action] revise, modify or remand the decision from which the appeal was taken in a manner consistent with the evidence in the record before it. In an appeal from an action of a planning commission taken under section 8-29, the court may also reassess any damages or benefits awarded by the commission. Costs shall be allowed against the board if the decision appealed from is reversed, affirmed in part, modified or revised.

Sec. 3. Subsection (a) of section 22a-43a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) The court, after a hearing, may reverse or affirm, wholly or



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partly, or may revise, modify or remand the decision from which the appeal was taken in a manner consistent with the evidence in the record before it. If upon appeal pursuant to section 22a-43, the court finds that the action appealed from constitutes the equivalent of a taking without compensation, [it] the court (1) shall set aside the action or [it] may modify the action so that it does not constitute a taking. [ In both instances the court] and (2) shall remand the order to the inland wetland agency for action not inconsistent with its decision.

Sec. 4. Subsection (a) of section 46b-22 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Persons authorized to solemnize marriages in this state include (1) all judges and retired judges, either elected or appointed, including federal judges and judges of other states who may legally join persons in marriage in their jurisdictions, (2) family support magistrates, family support referees, state referees and justices of the peace who are appointed in Connecticut, and (3) all ordained or licensed members of the clergy, belonging to this state or any other state, as long as they continue in the work of the ministry. All marriages solemnized according to the forms and usages of any religious denomination in this state, including marriages witnessed by a duly constituted Spiritual Assembly of the Baha'is, are valid. All marriages attempted to be celebrated by any other person are void.

Sec. 5. Section 46b-22a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) All marriages celebrated before June 6, 2014, otherwise valid except that the justice of the peace joining such persons in marriage did not have a valid certificate of qualification, are validated, provided the justice of the peace who joined such persons in marriage represented himself or herself to be a duly qualified justice of the peace

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and such persons reasonably relied upon such representation.

(b) All marriages celebrated before the effective date of this section, otherwise valid except that the family support referee joining such persons in marriage did not have explicit statutory authority to solemnize marriages in this state, are validated, provided the family support referee who joined such persons in marriage represented himself or herself to be a duly qualified family support referee and such persons reasonably relied upon such representation.

Sec. 6. Section 46b-225 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

Any judicial marshal may serve a capias mittimus or a copy thereof made by any photographic, micrographic, electronic imaging or other process, which clearly and accurately copies such original document, provided such judicial marshal or Support Enforcement Services of the Superior Court is in possession of the original document, on any person who is in the custody of the marshal or is in a courthouse where the marshal provides courthouse security if such capias mittimus was issued in a child support matter by (1) a court or a family support magistrate pursuant to subdivision (8) of subsection (a) of section 17b-745 or subparagraph (C) of subdivision (8) of subsection (a) of section 46b-215; or (2) a family support magistrate pursuant to subdivision (1) of subsection (m) of section 46b-231.

Sec. 7. Subsection (a) of section 47a-23a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) If, at the expiration of the three days prescribed in section 47a-23, the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the Superior Court may issue a writ, summons and complaint which shall be in the form

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and nature of an ordinary writ, summons and complaint in a civil process, but which shall set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy of the premises. If the claim is for the possession or occupancy of nonresidential property, the writ, summons and complaint shall also make a claim for the forfeiture to the plaintiff of the possessions and personal effects of the defendant in accordance with section 47a-42a. If the plaintiff has properly issued a notice to quit possession to an occupant by alias, if permitted to do so by section 47a-23, and has no further identifying information at the time of service of the writ, summons and complaint, such writ, summons and complaint may also name and serve such occupant or occupants as defendants. In any case in which service is to be made upon an occupant or occupants identified by alias, the complaint shall contain an allegation that the plaintiff does not know the name of such occupant or occupants. Such complaint shall be returnable to the Superior Court. Such complaint may be made returnable six days, inclusive, after service upon the defendant and shall be returned to court at least three days before the return day. Such complaint may be served on any day of the week. [Notwithstanding the provisions of section 52-185 no recognizance shall be required of a complainant appearing pro se.]

Sec. 8. Subsection (a) of section 51-52 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Clerks shall: (1) Receive the files, processes and documents returnable to their court locations, (2) make records of all proceedings required to be recorded, (3) have the custody of the active files and records of the court, (4) have the custody of the records of the former county court within their districts, (5) have the custody of and keep safely in the appropriate office, or store as provided in subsection (b)



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of this section, as records of the court, all judicial files, records and dockets belonging to or concerning the office of justices of the peace and trial justices, judges of borough, city, town and police courts, the traffic court of Danbury, the Circuit Court and the Court of Common Pleas, or belonging to or concerning such courts, including record books kept by town clerks under the provisions of sections 51-101 and 51-106 of the general statutes, revision of 1958, (6) make and keep dockets of causes in their court locations, (7) issue executions on judgments, (8) collect and receive all fines and forfeitures imposed or decreed by the court, including fines paid after commitment, (9) collect and receive monetary contributions made to the Criminal Injuries Compensation Fund pursuant to section 54-56h, (10) account for and pay or deposit all fees, fines, forfeitures and contributions made to the Criminal Injuries Compensation Fund and the proceeds of judgments of their office in the manner provided by sections 4-32 and 51-56a, [(11) file with the Reporter of Judicial Decisions copies of memoranda of decisions in Superior Court cases, as provided in section 51-215a,] and [(12)] (11) perform all other duties imposed on them by law.

Sec. 9. Section 51-60 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) The judges of the Superior Court shall appoint [one skillful stenographer for each judicial district to be the official court reporter of the Superior Court therein, and shall appoint as many stenographers to be assistant] official court reporters for the court as the judges or an authorized committee thereof determines the business of the court requires.

(b) A person shall not be appointed a court reporter under the provisions of this section who has not passed the entry level examination provided for under section 51-63 and a reporter shall not be placed in the higher court reporter salary classification who has not passed the examination provided for in said section for such higher

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classification, provided each person serving on July 1, 1978, as a court reporter or assistant court reporter in the Court of Common Pleas shall continue to serve in the Superior Court for the balance of the term for which he was appointed. In no event shall the compensation of such person be affected solely as a result of the transfer of jurisdiction provided in section 51-164s.

Sec. 10. Section 51-215a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

[(a) The clerks of the Superior Court shall file with the Reporter of Judicial Decisions copies of memoranda of decisions in Superior Court cases. The reporter shall select therefrom for publication such decisions as he deems will be useful as precedents or will serve the public interest and shall prepare them for publication and index them in substantial conformity with the manner in which decisions of the Supreme Court are prepared and indexed. The decisions selected shall be published by the Commission on Official Legal Publications in the Connecticut Law Journal and in such bound volumes as the Reporter of Judicial Decisions deems necessary.]

[(b)] The clerk of the Appellate Court shall file with the Reporter of Judicial Decisions copies of memoranda of decisions in Appellate Court cases. The reporter shall prepare all of the decisions for publication and index them in substantial conformity with the manner in which decisions of the Supreme Court are prepared and indexed. The decisions shall be published by the Commission on Official Legal Publications in the Connecticut Law Journal and in bound volumes.

Sec. 11. Subsection (b) of section 51-216a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) The commission shall acquire, publish, distribute and maintain



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for the benefit of the state a sufficient supply of the official legal publications, which shall consist of: (1) The Connecticut Reports consisting of the reports of cases determined by the Supreme Court as prepared for publication by the Reporter of Judicial Decisions, (2) reports of cases determined by the Appellate Court as prepared for publication by the Reporter of Judicial Decisions, (3) the Connecticut Law Journal, (4) the Connecticut Practice Book and cumulative supplements thereto, [(5) the digests compiled by or under the supervision of the Reporter of Judicial Decisions pursuant to section 51-215b, and such other volumes of law reports and digests as the Reporter of Judicial Decisions deems necessary, (6) such decisions of the Superior Court as the Reporter of Judicial Decisions selects for publication pursuant to section 51-215a,] and [(7)] (5) such additional publications pertaining to the state Judicial Branch, the Supreme Court, the Appellate Court, the Superior Court and the practice of law as may be assigned to the commission. The commission may publish, maintain and distribute the official legal publications in available alternative formats. An alternative format includes an electronic format and may be the sole method for the publication, maintenance and distribution of all official legal publications, all archived official legal protections and all volumes of the Connecticut Reports, excluding the most recent one hundred volumes.

Sec. 12. Subdivision (2) of subsection (b) of section 51-216b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(2) Bills contracted and expenses incurred by the commission for the purposes specified in this section and sections 51-215a, as amended by this act, [51-215b,] 51-216a, as amended by this act, and 51-216c shall be paid from moneys appropriated from the General Fund.

Sec. 13. Section 52-74 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

**Substitute Senate Bill No. 1033**

Any bond entered into in accordance with the laws of any other state of the United States, conditioned for the proper performance by any person or persons of the duties of executor, administrator, guardian or trustee, to the acceptance of the court having jurisdiction, may be enforced, in case of breach, against any obligors therein, resident within this state, by an action in the name of the person or persons who would be entitled to sue thereon in the proper courts of such other state. All such suits, in respect to the security for the costs by endorsement, and the effect of the judgments rendered in the same, shall be governed by the provisions concerning actions on probate bonds contained in [sections 52-117 and 52-190] section 52-117.

Sec. 14. Section 52-185 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

[(a) If the plaintiff in any civil action is not an inhabitant of this state, or if it does not appear to the authority signing the process that the plaintiff is able to pay the costs of the action should judgment be rendered against him, the plaintiff shall enter into a recognizance to the adverse party with a financially responsible inhabitant of this state as surety, or a financially responsible inhabitant of this state shall enter into a recognizance to the adverse party, that the plaintiff shall prosecute his action to effect and answer all costs for which judgment is rendered against him. The recognizance shall not be discharged by any amendment or alteration of the process between the time of signing and of serving it.]

(a) No bond or recognizance for prosecution is required from a party in any civil action unless the judicial authority, upon motion and for good cause shown, finds that a party is not able to pay the costs of the action and orders that the party give a sufficient bond or enter into a recognizance to an adverse party with a financially responsible person to pay taxable costs. In determining the sufficiency of the bond or recognizance, the judicial authority shall consider only the taxable

**Substitute Senate Bill No. 1033**

costs which the party may be responsible for under section 52-257, except that in no event shall the judicial authority consider the fees or charges of expert witnesses notwithstanding that such fees or charges may be allowable under said section.

(b) The recognizance may be taken in the following form:

You, C.S., as principal, and E.C., as surety, acknowledge yourselves jointly and severally bound to J.L., in a recognizance (or, as the case may be, You, E.C., acknowledge yourself bound to J.L., in a recognizance) of .... dollars, that C.S. shall prosecute the action which he has now commenced against J.L. at the Superior court to be held at H. in and for the judicial district of H., on the .... Tuesday of ...., 20.. to full effect, and that he shall pay any costs for which judgment may be rendered against him thereon.

Taken and acknowledged at H. on the .... day of ...., 20.., before me, J.W., Commissioner of the Superior Court.

(c) If a bond or recognizance is required on any writ of summons or attachment, it may be noted in the writ in the following manner:

E.C. of .... is recognized in \$.... to prosecute, etc. (or words to that effect).

(d) [If there has been a failure to comply with the provisions of this section, or if the authority signing a writ has failed to certify in accordance with any statute or rule that he has personal knowledge as to the financial responsibility of the plaintiff and deems it sufficient, the validity of the writ and service shall not be affected unless the failure is made a ground of a plea in abatement. If such plea in abatement is filed and sustained or if the plaintiff voluntarily elects to cure the defect by filing a bond, the court shall direct the plaintiff to file a bond to prosecute in the usual amount. Upon the filing of the bond, the case shall proceed in the same manner and to the same effect



**Substitute Senate Bill No. 1033**

as to rights of attachment and in all other respects as though the failure had not occurred. The court may, in its discretion, order, as a condition to the acceptance of the bond, that the plaintiff pay to the defendant costs not to exceed the costs in full to the date of the order.] Any party failing to comply with an order of the judicial authority to give sufficient bond or recognizance may be nonsuited or defaulted.

Sec. 15. Subsection (a) of section 52-259 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be paid to the clerks for entering each appeal or writ of error to the Supreme Court, or entering each appeal to the Appellate Court, as the case may be, two hundred fifty dollars, and for each civil cause in the Superior Court, three hundred fifty dollars, except (1) two hundred twenty-five dollars for entering each case in the Superior Court in which the sole claim for relief is damages and the amount, legal interest or property in demand is less than two thousand five hundred dollars; (2) one hundred seventy-five dollars for summary process and landlord and tenant actions; and (3) there shall be no entry fee for making an application to the Superior Court for relief under section 46b-15 or 46b-16a, or for making an application to modify or extend an order issued pursuant to section 46b-15 or 46b-16a. If the amount, legal interest or property in demand by the plaintiff is alleged to be less than two thousand five hundred dollars, a new entry fee of seventy-five dollars shall be charged if the plaintiff amends his or her complaint to state that such demand is not less than two thousand five hundred dollars.

Sec. 16. Subsection (a) of section 52-259c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be paid to the clerk of the Superior Court upon the

**Substitute Senate Bill No. 1033**

filing of any motion to open, set aside, modify or extend any civil judgment rendered in Superior Court a fee of seventy-five dollars for any housing matter, a fee of seventy-five dollars for any small claims matter, a fee of one hundred seventy-five dollars for any post-judgment motion to modify any judgment in a family relations matter, as defined in section 46b-1, and a fee of one hundred twenty-five dollars for any other matter, except no fee shall be paid upon the filing of any motion to open, set aside, modify or extend judgments in juvenile matters or orders issued pursuant to section 46b-15 or 46b-16a or upon the filing of any motion pursuant to subsection (b) of section 46b-63. Such fee may be waived by the court.

Sec. 17. Section 53a-223b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A person is guilty of criminal violation of a restraining order when (1) (A) a restraining order has been issued against such person pursuant to section 46b-15, or (B) a foreign order of protection, as defined in section 46b-15a, has been issued against such person in a case involving the use, attempted use or threatened use of physical force against another, and (2) such person, having knowledge of the terms of the order, (A) does not stay away from a person or place in violation of the order, (B) contacts a person in violation of the order, (C) imposes any restraint upon the person or liberty of a person in violation of the order, or (D) threatens, harasses, assaults, molests, sexually assaults or attacks a person in violation of the order.

(b) No person who is listed as a protected person in such restraining order or foreign order of protection may be criminally liable for (1) soliciting, requesting, commanding, importuning or intentionally aiding in the violation of the restraining order or foreign order of protection pursuant to subsection (a) of section 53a-8, or (2) conspiracy to violate such restraining order or foreign order of protection pursuant to section 53a-48.

**Substitute Senate Bill No. 1033**

(c) No person who is listed as a respondent in a restraining order issued pursuant to section 46b-15 or a foreign order of protection issued pursuant to section 46b-15a and against whom there is an order of no contact with the protected party or parties may be criminally liable for a violation of such order if such person causes a document filed in a family relations matter, as defined in section 46b-1, to be served on the protected party or parties in accordance with the law by mail or through a third party who is authorized by statute to serve process.

[[c)] (d) (1) Except as provided in subdivision (2) of this subsection, criminal violation of a restraining order is a class D felony.

(2) Criminal violation of a restraining order is a class C felony if the offense is a violation of subparagraph (C) or (D) of subdivision (2) of subsection (a) of this section.

Sec. 18. Section 53a-223c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A person is guilty of criminal violation of a civil protection order when (1) a civil protection order has been issued against such person pursuant to section 46b-16a, and (2) such person, having knowledge of the terms of the order, violates such order.

(b) No person who is listed as a respondent in a civil protection order issued pursuant to section 46b-16a may be criminally liable for a violation of such order if such person causes a legal document to be served on the protected person by mail or through a third party in accordance with the law. For purposes of this subsection, "legal document" includes, but is not limited to, a notice of appearance or any other application, petition, or motion filed in good faith by such person in connection with any pending court matter, or in any court matter that may be brought subsequently.



**Substitute Senate Bill No. 1033**

[(b)] (c) Criminal violation of a civil protection order is a class D felony.

Sec. 19. Subsection (b) of section 54-56e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) The court may, in its discretion, invoke such program on motion of the defendant or on motion of a state's attorney or prosecuting attorney with respect to a defendant (1) who, the court believes, will probably not offend in the future, (2) who has no previous record of conviction of a crime or of a violation of section 14-196, subsection (c) of section 14-215, section 14-222a, subsection (a) or subdivision (1) of subsection (b) of section 14-224 or section 14-227a, and (3) who states under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under the penalties of perjury, (A) that the defendant has never had such program invoked on the defendant's behalf or that the defendant was charged with a misdemeanor or a motor vehicle violation for which a term of imprisonment of one year or less may be imposed and ten or more years have passed since the date that any charge or charges for which the program was invoked on the defendant's behalf were dismissed by the court, or (B) with respect to a defendant who is a veteran, that the defendant has not had such program invoked in the defendant's behalf more than once previously, provided the defendant shall agree thereto and provided notice has been given by the defendant, on a form [approved by rule of court] prescribed by the Office of the Chief Court Administrator, to the victim or victims of such crime or motor vehicle violation, if any, by registered or certified mail and such victim or victims have an opportunity to be heard thereon. Any defendant who makes application for participation in such program shall pay to the court an application fee of thirty-five dollars. No defendant shall be allowed to participate in the pretrial program for accelerated

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rehabilitation more than two times. For the purposes of this section, "veteran" means any person who was discharged or released under conditions other than dishonorable from active service in the armed forces as defined in section 27-103.

Sec. 20. Subdivision (1) of subsection (a) of section 54-56g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) (1) There shall be a pretrial alcohol education program for persons charged with a violation of section 14-227a, 14-227g, 15-132a, 15-133, 15-140l or 15-140n. Upon application by any such person for participation in such program and payment to the court of an application fee of one hundred dollars and a nonrefundable evaluation fee of one hundred dollars, the court shall, but only as to the public, order the court file sealed, provided such person states under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under penalties of perjury that: (A) If such person is charged with a violation of section 14-227a, such person has not had such program invoked in such person's behalf within the preceding ten years for a violation of section 14-227a, (B) if such person is charged with a violation of section 14-227g, such person has never had such program invoked in such person's behalf for a violation of section 14-227a or 14-227g, (C) such person has not been convicted of a violation of section 53a-56b or 53a-60d, a violation of subsection (a) of section 14-227a before, on or after October 1, 1981, or a violation of subdivision (1) or (2) of subsection (a) of section 14-227a on or after October 1, 1985, (D) such person has not been convicted in any other state at any time of an offense the essential elements of which are substantially the same as section 53a-56b or 53a-60d or subdivision (1) or (2) of subsection (a) of section 14-227a, and (E) notice has been given by such person, by registered or certified mail on a form [approved by rule of court] prescribed by the Office of the Chief Court



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Administrator, to each victim who sustained a serious physical injury, as defined in section 53a-3, which was caused by such person's alleged violation, that such person has applied to participate in the pretrial alcohol education program and that such victim has an opportunity to be heard by the court on the application.

Sec. 21. Subsection (c) of section 54-56l of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(c) Upon application by any such person for participation in such program, the court shall, but only as to the public, order the court file sealed, provided such person states under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under penalties of perjury, that such person has not had such program invoked in such person's behalf more than once. Court personnel shall provide notice, on a form [approved by rule of court] prescribed by the Office of the Chief Court Administrator, to any victim of such crime or motor vehicle violation, by registered or certified mail, that such person has applied to participate in the program and that such victim has an opportunity to be heard by the court on the matter.

Sec. 22. Subsection (e) of section 54-208 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(e) In determining the amount of compensation to be allowed, the Office of Victim Services or, on review, a victim compensation commissioner shall take into consideration amounts that the applicant has received or is eligible to receive from any other source or sources, including, but not limited to, payments from state and municipal agencies, health insurance benefits, and workers' compensation awards, as a result of the incident or offense giving rise to the

**Substitute Senate Bill No. 1033**

application. For purposes of this section, life insurance benefits received by the applicant shall not be taken into consideration by the Office of Victim Services or a victim compensation commissioner.

Sec. 23. Section 2 of number 257 of the special acts of 1917 is amended to read as follows (*Effective from passage*):

The clerk of [said court] the superior court in the judicial district of Litchfield, or his successor in office, is directed to hold [said fund] the escheated property formerly known as the Salmon Brownson Fund and to act as trustee of the same and on July 1, 1917, to pay the interest thereon which shall have accrued to July 1, 1917, to the treasurer of the Warren Cemetery Association, a domestic corporation situated in the town of Warren in said Litchfield county, and thereafter to pay to said cemetery association, during the first week in January and July, annually, the interest which shall have accrued from said fund. On or before October 1, 2015, the clerk of said court shall pay to the treasurer of said cemetery association the entire balance of the fund and shall close the account.

Sec. 24. Section 4 of number 257 of the special acts of 1917 is amended to read as follows (*Effective from passage*):

The Warren Cemetery Association shall use the [interest] funds which it may receive from said trustee for the care of the monuments and graves of Salmon Brownson and wife, and members of his family, deceased, late of said town of Warren, in the Warren cemetery, and any unexpended portion of the money so received by said association may be used by it for the care of the graves of persons formerly members of the Warren Methodist Episcopal church and their descendants and any unexpended portion of the income of said fund may be expended for the general purposes of said cemetery association, but in case of the organization of a Methodist Episcopal church society in said town of Warren which shall conduct services

**Substitute Senate Bill No. 1033**

regularly, and at least one such service during each month in said town for a period of six months in some suitable and convenient place to accommodate the people of said town of Warren, said trustee shall pay the income from said fund semi-annually at the expiration of said six months' period to the treasurer of such church society, and shall continue to make such payments semi-annually to such church society so long as regular services shall be so conducted in said town, and upon the discontinuance of such regular services, the income from said fund shall again revert and be paid to said cemetery association for the purposes stated in [this act] number 257 of the special acts of 1917.

Sec. 25. (*Effective from passage*) (a) Notwithstanding the failure to file a proper notice of a claim against the state with the clerk of the Office of the Claims Commissioner, within the time limitations specified by subsection (a) of section 4-148 of the general statutes, Lori Calvert is authorized pursuant to the provisions of subsection (b) of section 4-148 of the general statutes to present her claim against the state to the Claims Commissioner. The General Assembly finds that there is a public purpose served by encouraging accountable state government through the full adjudication of cases involving persons who claim to have been injured by the conduct of state actors. The General Assembly further finds it just and equitable that the time limitations provided for in subsection (a) of section 4-148 of the general statutes be tolled in a case such as this, involving a claimant who commenced a civil action in the superior court for the judicial district of Hartford in December 2010, thereby providing notice to the state of her claim within the statute of limitations for injuries to her person that are alleged to have occurred in January 2010. The General Assembly deems such authorization to be just and equitable and finds that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such claim shall be presented to the Claims Commissioner not later than one year after the effective date of this section.

**Substitute Senate Bill No. 1033**

(b) The state shall be barred from setting up the failure to comply with the provisions of sections 4-147 and 4-148 of the general statutes, from denying that notice of the claim was properly and timely given pursuant to sections 4-147 and 4-148 of the general statutes and from setting up the fact that the claim had once been considered by the Claims Commissioner, by the General Assembly or in a judicial proceeding as defenses to such claim.

Sec. 26. Sections 1 and 3 of number 257 of the special acts of 1917 are repealed. (*Effective from passage*)

Sec. 27. Sections 51-215b, 52-186, 52-187, 52-188 and 52-190 of the general statutes are repealed. (*Effective October 1, 2015*)

Approved June 24, 2015





**Substitute House Bill No. 6942**

**Public Act No. 15-68**

**AN ACT VALIDATING THE ACTION OF A MUNICIPAL ASSESSOR,  
EXTENDING THE FILING DEADLINE FOR CERTAIN PROPERTY  
TAX EXEMPTIONS AND CONCERNING NOTICE REQUIREMENTS  
FOR ZONING APPLICANTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) The grand list for the assessment year commencing October 1, 2014, as signed by the assessor of the town of Naugatuck on March 31, 2015, is hereby validated notwithstanding the assessor's failure to publish or lodge for public inspection such grand list or abstract related thereto within the time period specified in section 12-55 of the general statutes or any extension thereof granted by the chief executive officer pursuant to section 12-117 of the general statutes. Notwithstanding the provisions of sections 12-110, 12-111 and 12-117 of the general statutes, the Naugatuck board of assessment appeals may hold a hearing with respect to the assessment of any property included on said grand list or grand list abstract, provided a written request for such hearing is submitted to said board not later than thirty days after the effective date of this section. Said board shall send notification to the person having filed such request of the time and date of an appeal hearing at least seven calendar days preceding the hearing date, but not later than sixty days after the effective date of this section. Such hearings may be

**Substitute House Bill No. 6942**

held in the months of May, June, July and August of 2015 and said board shall complete its duties with respect to such appeals not later than August 31, 2015. If said board elects not to conduct a hearing for any commercial, industrial, utility or apartment property with an assessed value greater than one million dollars, it shall notify the taxpayer of such decision not later than sixty days after the effective date of this section. All provisions of sections 12-111 and 12-117 of the general statutes, other than the extension of the filing and notification dates as provided in this section, shall be applicable to such appeals or denials of appeals.

Sec. 2. Subsection (a) of section 8-7d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 or an aquifer protection agency under chapter 446i and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulations shall include provisions that the

**Substitute House Bill No. 6942**

notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, [and] (2) the person who owns land shall be the owner indicated on the property tax map or on the last-completed grand list as of the date such notice is mailed, and (3) a title search or any other additional method of identifying persons who own land that is adjacent to the land that is the subject of the hearing shall not be required. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

Sec. 3. (*Effective from passage*) Notwithstanding the provisions of subparagraph (B) of subdivision (72) of section 12-81 of the general statutes, any person otherwise eligible for a 2014 grand list exemption pursuant to said subdivision (72) in the town of Durham, except that such person failed to file the required exemption application within the time period prescribed, shall be regarded as having filed said application in a timely manner if such person files said application not later than thirty days after the effective date of this section, and pays the late filing fee pursuant to section 12-81k of the general statutes. Upon confirmation of the receipt of such fee and verification of the exemption eligibility of the machinery and equipment included in such application, the assessor shall approve the exemption for such property. If taxes have been paid on the property for which such



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exemption is approved, the town of Durham shall reimburse such person in an amount equal to the amount by which such taxes exceed the taxes payable if the application had been filed in a timely manner.

Sec. 4. (*Effective from passage*) Notwithstanding the provisions of subparagraph (A) of subdivision (7) of section 12-81 of the general statutes and section 12-87a of the general statutes, any person otherwise eligible for a 2013 grand list exemption for all or part of the assessment year pursuant to said subdivision (7) in the town of North Branford, except that such person failed to file the required statement within the time period prescribed, shall be regarded as having filed such statement in a timely manner if such person files such statement not later than thirty days after the effective date of this section and pays the late filing fee pursuant to section 12-87a of the general statutes. Upon confirmation of the receipt of such fee and verification of the exemption eligibility of such property, the assessor shall approve the exemption for such property. If taxes, interest or penalties have been paid on the property for which such exemption is approved, the town of North Branford shall reimburse such person in an amount equal to the amount by which such taxes, interest and penalties exceed any taxes payable if the statement had been filed in a timely manner.

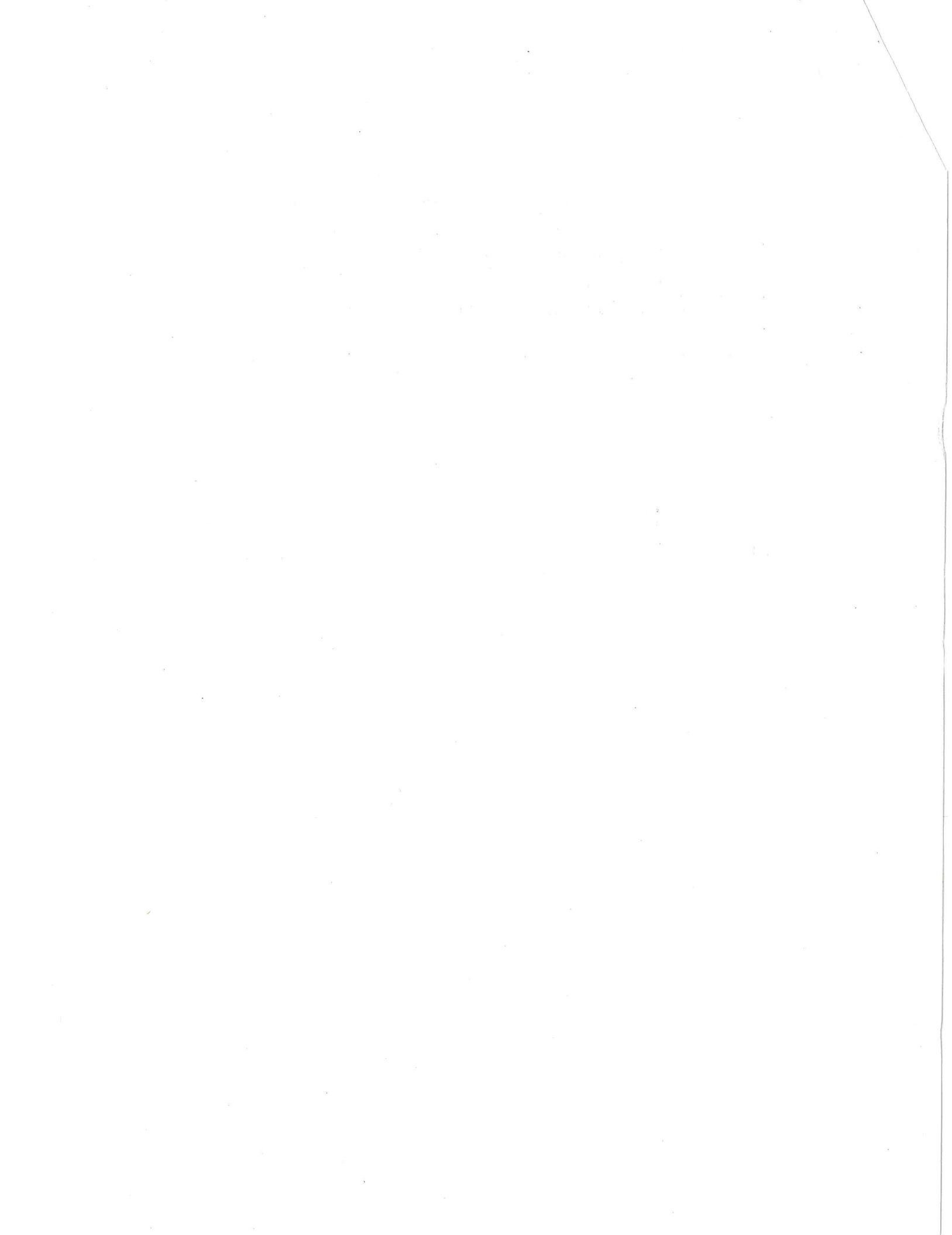
Sec. 5. (*Effective from passage*) Notwithstanding the provisions of subparagraph (B) of subdivision (72) of section 12-81 of the general statutes, any person otherwise eligible for a 2014 grand list exemption pursuant to said subdivision (72) in the town of Windsor, except that such person failed to file the required exemption application within the time period prescribed, shall be regarded as having filed said application in a timely manner if such person files said application not later than thirty days after the effective date of this section, and pays the late filing fee pursuant to section 12-81k of the general statutes. Upon confirmation of the receipt of such fee and verification of the exemption eligibility of the machinery and equipment included in such



***Substitute House Bill No. 6942***

application, the assessor shall approve the exemption for such property. If taxes have been paid on the property for which such exemption is approved, the town of Windsor shall reimburse such person in an amount equal to the amount by which such taxes exceed the taxes payable if the application had been filed in a timely manner.

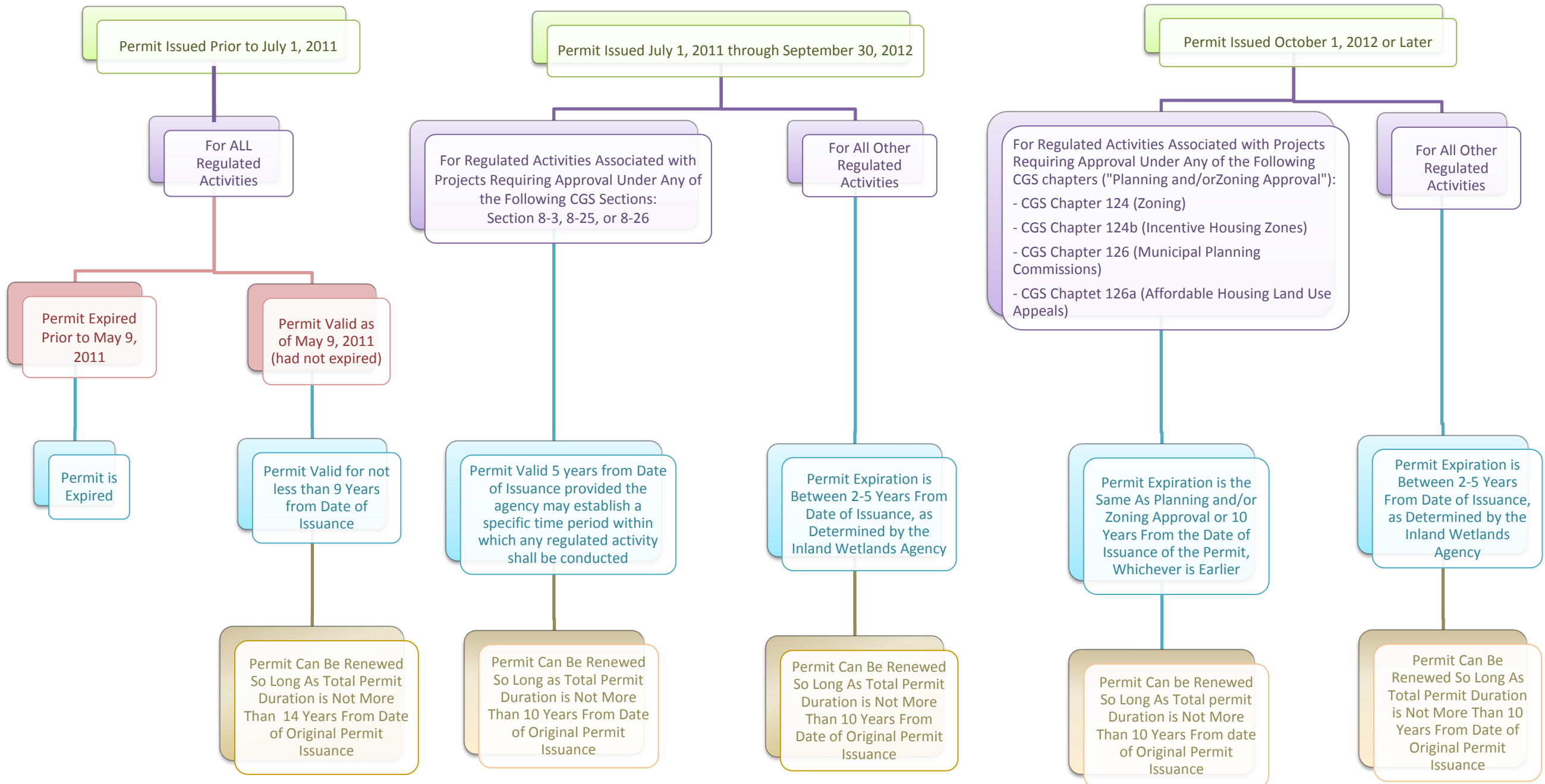
Approved June 19, 2015

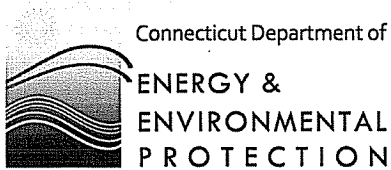


# CT Inland Wetlands & Watercourses Act Section 22a-42a

## PERMIT EXPIRATIONS

The DEEP provides this chart for reference purposes only. Please refer to CT General Statutes § 22a-42a to determine the term of a specific wetlands permit.






79 Elm Street • Hartford, CT 06106-5127

[www.ct.gov/deep](http://www.ct.gov/deep)

Affirmative Action/Equal Opportunity Employer

To: Connecticut's Municipal Inland Wetlands Agencies  
From: Betsey Wingfield, Bureau Chief   
Bureau of Water Protection and Land Reuse  
Dated: August 29, 2012  
Re: 2012 Legislation and Regulation Advisory

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In 2012 the Connecticut General Assembly amended the Inland Wetlands and Watercourses Act (IWWA) with the passage of Public Act No. 12-151.

Public Act No. 12-151 amends section 22a-42a(d)(1) and section 22a-42a(d)(2) of the General Statutes of Connecticut. Specifically, the Public Act amends (d)(1) by stating that permit conditions can include seasonal restrictions provided the inland wetlands agency or its agent determines that such restrictions are necessary to carry out the policy of the IWWA; and amends (d)(2) by specifying that for regulated activities involving development projects also requiring approval under Connecticut General Statutes Chapter 124 (Zoning), Chapter 124b (Incentive Housing Zones), Chapter 126 (Municipal Planning Commissions) or Chapter 126a (Affordable Housing Land Use Appeals), the wetlands permit approval is valid until the companion planning and/or zoning permit approval expires, or for ten years from the date of issuance of the wetlands permit, whichever is earlier.

A complete copy of Public Act No. 12-151 is attached for your information. Newly added language is underlined and deleted language is bracketed. The provisions of section 22a-42a(d) of the Connecticut General Statutes, as amended by Public Act No. 12-151, take effect October 1, 2012. You should plan to revise your inland wetlands agency regulations to reflect these amendments to the IWWA.

The following changes to the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition, dated May 1, 2006, as amended by the Department of Energy and Environmental Protection's Legislation and Regulation Advisories dated February 1, 2007; December 10, 2007; October 14, 2008; March 3, 2010; November 17, 2010; and September 8, 2011 are made in order to conform to Public Act No. 12-151:

*Section 11: Decision Process and Permit*

The underlined language noted below is new and should be added to your regulations. The bracketed language noted below should be deleted from your regulations.

11.1 The Agency, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the Agency, or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes.

11.2 ... 11.5

11.6 Any permit issued by the Agency for the development of land for which an approval is required under [section 8-3, 8-25 or 8-26] chapter 124, 124b, 126 or 126a of the Connecticut General Statutes shall be valid [for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted] until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued by the Agency for any [other] activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. [Any permit issued by the Agency prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.]

11.6.1 Notwithstanding the provisions of Section 11.6 of these regulations, any permit issued by the Agency prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.

To assist your agency in understanding the various permit expiration dates, a flow chart of relevant statutory permit approval timeframes is attached.

Finally, please note that within your inland wetlands agency regulations all references to the "Department of Environmental Protection" and "DEP" should be changed to the "Department of Energy and Environmental Protection" and "DEEP".

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019.



Connecticut Department of  
**ENERGY &  
ENVIRONMENTAL  
PROTECTION**

To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield, Bureau Chief  
Bureau of Water Protection and Land Reuse

Dated: September 8, 2011

Re: 2011 Legislation and Regulations Advisory

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In 2011 the Connecticut General Assembly amended the Inland Wetlands and Watercourses Act (IWWA) with the passage of two public acts: Public Act No. 11-5 and Public Act No. 11-184.

Public Act No. 11-5 amends sections 8-3(m), 8-26c(e), 8-26g(c), and 22a-42a(g) of the General Statutes of Connecticut. Specifically, section 4 of the public act, which amends section 22a-42a(g) of the IWWA, extends the deadlines that apply to certain inland wetlands agency permits. The new language states that any permit issued by a municipal inland wetlands agency that did not expire before May 9, 2011 (the effective date of the public act), is valid for nine years from the date of approval of such permit. Further, any permit that was issued before July 1, 2011 will also be valid for nine years from the date of approval of such permit. Pursuant to the new language of section 4 amending section 22a-42a(g) of the IWWA, the combined extensions of such permit, if renewal is sought, may lengthen the validity of such permit to a maximum of fourteen years.

It is important to note that for qualifying permits the extension of the initial length of the permit is automatic. Extensions by way of renewal are subject to a timely request by the permit holder.

Public Act No. 11-184 amends section 22a-40 of the General Statutes of Connecticut. Specifically, section 1 of the public act adds the withdrawal of water for fire emergency purposes as an as-of-right operation and use in wetlands and watercourses. Further, section 1 of the public act adds the installation of dry hydrants for firefighting purposes by or under the authority of a municipal fire department and under certain specified conditions as a new non-regulated use in wetlands and watercourses, and defines the term "dry hydrant".

A complete copy of Public Act No. 11-5 and Public Act No. 11-184 is attached for your information. Newly added language is underlined and deleted language is bracketed. You should plan to revise your inland wetlands agency regulations to reflect these amendments to the IWWA. The provisions of both section 22a-42a(g) and section 22a-40 of the General Statutes of Connecticut, as amended by both Public Act No. 11-5 and Public Act No. 11-184, govern until such time as your municipal regulations are amended. Section 4 of Public Act No. 11-5 became effective from the date of passage, which was May 9, 2011; and section 1 of Public Act No. 11-184 will become effective on October 1, 2011.

The following changes to the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition, dated May 1, 2006, as amended by the Department of Energy and Environmental Protection's 2009 Legislation and Regulations Advisory, dated March 3, 2010, are made in order to conform to Public Act No. 11-5 and Public Act No. 11-184:

*Section 4: Permitted Uses as of Right & Nonregulated Uses*

The underlined language noted below is new and should be added to your regulations. The bracketed language noted below should be deleted from your regulations.

4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:

a. ...

b. a residential home [(i)] (A) for which a building permit has been issued or [(ii)] (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;

c. ...

d. ...

e. Construction and operation, by water companies as defined by section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in chapter 102 of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403 of the Connecticut General Statutes [and];

f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place[.]; and

g. Withdrawals of water for fire emergency purposes.

4.2 The following operations and uses shall be permitted, as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:

- a. Conservation of soil, vegetation, water, fish, shellfish and wildlife; [and]
- b. outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated [.] and
- c. The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, “dry hydrant” means a non-pressurized pipe system that: (A) is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

#### *Section 7: Application Requirements*

The underlined language noted below is new and should be added to your regulations. The bracketed language noted below should be deleted from your regulations.

- 7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided [a] no permit [issued during the time period from July 1, 2006, to July 1, 2009, inclusive,] shall be valid for more than [eleven] ten years, [; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years. ] and further provided that any permit issued prior to July 1, 2011 that did not expire prior to May 9, 2011 shall be valid for no more than fourteen years.

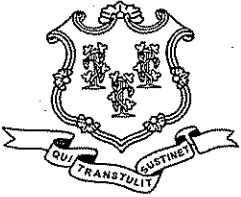
#### *Section 11: Decision Process and Permit*

The underlined language noted below is new and should be added to your regulations. The bracketed language noted below should be deleted from your regulations.

- 11.6 Any permit issued by the Agency [prior to July 1, 2006 or after July 1, 2009] for the development of land for which an approval is required under section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Agency [prior to July 1, 2006 or after July 1, 2009] for any other activity shall be valid for not less than two years and not more than five years. Any permit issued by the Agency [during the time period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than six years] prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019.





STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield, Bureau Chief *BW*  
Bureau of Water Protection and Land Reuse

Dated: November 17, 2010

Re: 2010 Legislation and Regulations Advisory

The 2010 Legislature amended section 47-42d of the General Statutes of Connecticut with the passage of Public Act No. 10-85. Section 1 of such Public Act affects municipal inland wetlands agencies when acting on certain permit applications relating to property subject to conservation or preservation restrictions. Specifically, the new language clarifies that when a regulated activity takes place on a portion of property that is *not* restricted under the terms of a conservation or a preservation restriction, the filing of a permit application for such regulated activity may not be prohibited, and the applicant does not need to provide written notice to the holder of the conservation or preservation restriction. In addition, the new language describes the process an inland wetlands agency is to undertake if a regulated activity will occur on property for which a conservation or preservation restriction is held by a state agency.

A complete copy of Public Act No. 10-85 is attached for your use with the amended language underlined in Section 1 of such Public Act. You should plan to revise your inland wetlands agency regulations to reflect the amendments. Please note that only the revised language in section 1 of Public Act No. 10-85 is relevant to inland wetlands agencies. The provisions of section 47-42d of the General Statutes of Connecticut as amended by Public Act No. 10-85 govern until such time that your municipal regulations are amended. Section 1 of Public Act No. 10-85 goes into effect October 1, 2010.

In order to conform to Public Act No. 10-85, the following changes to the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition dated May 1, 2006, as amended by the 2008 Legislation and Regulations Advisory dated October 14, 2008, are made:

*Section 7: Application Requirements*

The underlined language noted below is new and should be added to your regulations. The bracketed ([ ]) language is deleted and should be removed from your regulations.

- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- a. for purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

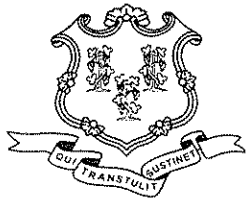
- b. for purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
- c. no person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of [an] such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filling of the permit application.
- d. in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

#### *Section 10: Considerations for Decisions*

The underlined language noted below is new and should be added to your regulations.  
The bracketed ( [ ] ) language is deleted and should be removed from your regulations.

- 10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval.
- 10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction[.]; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.
- 10.10 Nothing in subsections 7.11c or 7.11d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019.



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield  
Bureau Chief  
Bureau of Water Protection and Land Reuse

*PBW  
for BW  
4 Mar 2010*

Dated: March 3, 2010

Re: 2009 Legislation and Regulations Advisory

The 2009 Legislature amended section 22a-42a of the Connecticut Inland Wetlands and Watercourses Act with the passage of Section 3 of Public Act 09-181. This Public Act adds a new subsection (g) to section 22a-42a. This amendment went into effect upon passage of the Public Act on July 2, 2009.

Section 22a-42a of the Connecticut Inland Wetlands and Watercourses Act pertains to the establishment of wetland and watercourse boundaries by regulation, the adoption of inland wetlands agency regulations, inland wetlands agency permits, and filing fees. Public Act 09-181 added a new subsection (g) to section 22a-42a which allows permits issued during the period from July 1, 2006 to July 1, 2009 to be valid for not less than six years, and any such permit may be renewed upon certain circumstances, provided no such permit be valid for more than eleven years. Permits issued prior to July 1, 2006 or after July 1, 2009 are not subject to this amendment.

A complete copy of Public Act 09-181 is attached for your use with the amended language designated by "NEW". You should plan to revise your regulations to reflect the amendment to Section 22a-42a. Please note that only the revised language in section 3 of Public Act 09-181 is relevant to inland wetlands agencies. Changes to the other sections of the public act, while noted as "NEW", do not apply to inland wetlands agencies.

If your regulations follow the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition dated May 1, 2006, you should plan to revise the following sections as noted.

*Section 7: Application Requirements*

The underlined language noted below is new and should be added to your regulations.

7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Agency finds that there has been a substantial change in

circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided a) no permit issued during the time period from July 1, 2006, to July 1, 2009, inclusive, shall be valid for more than eleven years; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years.

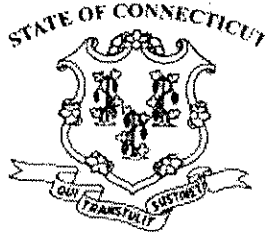
*Section 11: Decision Process and Permit*

The underlined language noted below is new and should be added to your regulations.

- 11.6 Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 for the development of land for which an approval is required under section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 for any other activity shall be valid for not less than two years and not more than five years. Any permit issued by the Agency during the time period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval.

Please be reminded it is our understanding that Section 3 of Public Act 09-181 governs until such time that your regulations are revised.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019.



**Substitute House Bill No. 5254**

**Public Act No. 09-181**

**AN ACT CONCERNING EXTENDING THE TIME OF EXPIRATION OF CERTAIN LAND USE PERMITS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 8-3 of the general statutes is amended by adding subsection (m) as follows (*Effective from passage*):

(NEW) (m) Notwithstanding the provisions of this section, any site plan approval made under this section during the period from July 1, 2006, to July 1, 2009, inclusive, except an approval made under subsection (j) of this section, shall expire not less than six years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided no approval, including all extensions, shall be valid for more than eleven years from the date the site plan was approved.

Sec. 2. Section 8-26c of the general statutes is amended by adding subsection (e) as follows (*Effective from passage*):

(NEW) (e) Notwithstanding the provisions of this section, any subdivision approval made under this section during the period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such subdivision, provided the time for all extensions under this subsection shall not exceed eleven years from the date the subdivision was approved.

Sec. 3. Section 22a-42a of the general statutes is amended by adding subsection (g) as follows (*Effective from passage*):

(NEW) (g) Notwithstanding the provisions of subdivision (2) of subsection (d) of this section, any permit issued under this section during the period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances that requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no such permit shall be valid for more than eleven years.

Sec. 4. Section 8-26g of the general statutes is amended by adding subsection (c) as follows  
*(Effective from passage):*

(NEW) (c) Notwithstanding the provisions of this section, any approval of a subdivision of land for a project of four hundred or more dwelling units made during the period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than eleven years after the date of such approval.

Approved July 2, 2009



**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield  
Bureau Chief  
Bureau of Water Protection and Land Reuse

Dated: February 1, 2007

Re: 2006 Legislation and Regulations Advisory

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The 2006 Legislature amended Section 22a-42f of the Inland Wetlands and Watercourses Act (IWWA) with the passage of Section 2 of Public Act 06-53. The change requires that the Commissioner of Public Health receive a notice of application when such application involves the watershed of a water company. Section 2 of Public Act 06-53 goes into effect on October 1, 2006.

To assist Municipal Inland Wetlands Agencies in amending their regulations, we are providing the Public Act language with the suggested revisions to the Inland Wetlands and Watercourses Model Regulations (IWWMR).

Inland Wetlands Agencies should plan to revise their regulations in the near future to conform to the new statute. The provisions of Section 2 of Public Act 06-53 govern until such time that your municipal regulations are amended.

In addition, we are providing a reminder regarding training requirements for municipal inland wetlands agency members and staff.

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Please note that new text has been underlined.

Public Act 06-53- An Act Concerning Protection of Public Water Supply Sources

Section 2 of this Public Act repealed section 22a-42f of the IWWA and substituted the following:

When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 25-32a, the applicant shall provide written notice of the application to the water company and the

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October 2, 2006

Page 2

Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application.

In order to conform to these revisions, the following changes to the IWWMR are made:

Section 8.3 of the IWWMR is deleted and replaced with the following:

8.3 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 25-32a, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application.

A copy of Public Act 06-53 is enclosed. Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther or Steven Tessitore of the Wetlands Management Section at (860) 424 - 3019.



**REMINDER: TRAINING REQUIREMENTS FOR MUNICIPAL INLAND  
WETLANDS AGENCY MEMBERS AND STAFF**

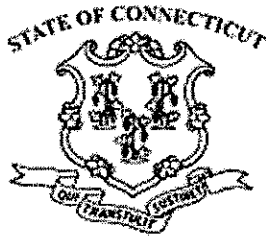
The Connecticut Inland Wetlands and Watercourses Act (Act), pursuant to Section 22a-42(d), requires that at least one member of the inland wetlands agency or staff of the agency complete the annual Municipal Inland Wetland Commissioners Training Program developed by DEP. The Act also mandates that each inland wetlands agency hold a meeting at least once annually at which information from the training program be shared with other agency members and staff.

Training requirements for both agency members and staff are limited to the paragraph stated above EXCEPT when an inland wetlands agency wishes to delegate to a duly authorized agent the ability to approve or extend a permit for certain regulated activities pursuant to Section 22a-42a(c)(2) of the Act. In order to be authorized four requirements MUST be met:

1. The municipal inland wetlands agency must vote to delegate this authority to the duly authorized agent;
2. The duly authorized agent must complete the annual Municipal Inland Wetland Commissioners Training Program offered by DEP;
3. The activity must not be located in a wetland or watercourse;
4. The activity must have no greater than a minimal impact on any wetland or watercourse.

The DEP has determined that completion of an annual program since 1995 to the present meets the training prerequisite stated in requirement number two (2) above. Receipt of a certificate of program completion provides proof of meeting this requirement.

If there are additional questions regarding this issue please contact Darcy Winther or Steven Tessitore at (860) 424-3019.



**Substitute Senate Bill No. 313**

**Public Act No. 06-53**

**AN ACT CONCERNING PROTECTION OF PUBLIC WATER SUPPLY SOURCES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 8-3i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) As used in this section "water company" means a water company, as defined in section 25-32a, and "petition" includes a petition or proposal to change the regulations, boundaries or classifications of zoning districts.

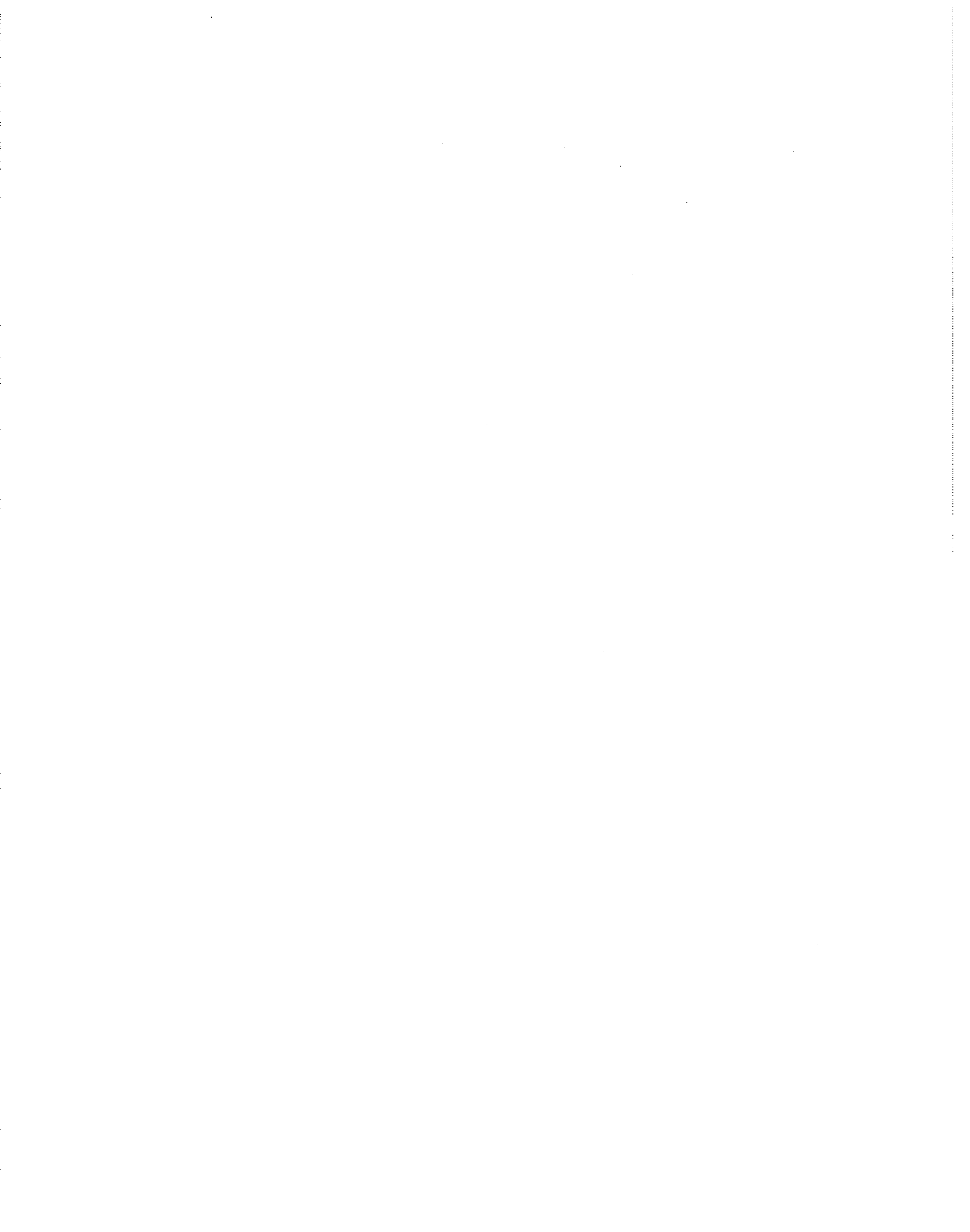
(b) When an application, petition, request or plan is filed with the zoning commission, planning and zoning commission or zoning board of appeals of any municipality concerning any project on any site [which] that is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company, the applicant or the person making the filing shall provide written notice of the application, petition, request or plan to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application, petition, request or plan is made and with the planning commission, zoning commission, planning and zoning commission or zoning board of appeals of such municipality or the aquifer protection area has been delineated in accordance with section 22a-354c, as the case may be. Such notice shall be made by certified mail, return receipt requested, and shall be mailed [within] not later than seven days [of] after the date of the application. Such water company and the Commissioner of Public Health may, through a representative, appear and be heard at any hearing on any such application, petition, request or plan.

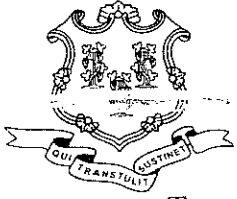
(c) Notwithstanding the provisions of subsection (b) of this section, when an agent of the zoning commission, planning and zoning commission or zoning board of appeals is authorized to approve an application, petition, request or plan concerning any site [which] that is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company without the approval of the zoning commission, planning and zoning commission or zoning board of appeals, and such agent determines that the

authority under the provisions of sections 7-244g to 7-244s, inclusive, and subject to the provision of said sections 7-244g to 7-244s, inclusive, an authority shall have the same rights, privileges and powers related to the issuance of bonds as are granted to a municipality or town, as such terms are defined in chapter 109. Where said chapter 109 authorizes or requests action by a municipal or town official, officer or body, the board of directors of an authority shall designate an official, officer or body of such authority to take such action on behalf of such authority, except that the provisions of sections 7-373 to 7-374a, inclusive, [7-347c] 7-374c, 7-378b, 7-378d and 7-378f do not apply to such authority. For purposes of this section, references in said chapter 109 to "taxes" or "taxation" mean charges or assessments by an authority.

Sec. 6. (*Effective from passage*) (a) The Commissioners of Environmental Protection and Public Health shall study the costs and benefits of using ethanol as a gasoline additive in this state as a means of meeting the requirements of the federal Clean Air Act. Such study shall examine (1) the public health implications of exposure to unsafe levels of ethanol and other toxics unique to ethanol-blended gasoline, (2) how using ethanol as a gasoline additive affects motor vehicle emissions and impacts on the state's implementation plan under the federal Clean Air Act, and (3) health risks associated with chronic exposure to ethanol or ethanol-blended gasoline.

(b) Not later than December 31, 2006, the Commissioner of Environmental Protection shall, within available appropriations and in accordance with section 11-4a of the general statutes, report the findings of the study authorized in subsection (a) of this section to the joint standing committees of the General Assembly having cognizance of matters relating to public health and the environment. In addition to such findings, such report shall include (1) an analysis of any reports or recommendations made by the Northeast States for Coordinated Air Use Management and the New England Interstate Water Pollution Control Commission, (2) an analysis of whether Connecticut should continue to use ethanol as a gasoline additive and, if not, an analysis of the process for seeking a waiver from the United States Environmental Protection Agency in order to discontinue the use of ethanol as a gasoline additive in this state, (3) an analysis of the effect of ethanol on the state's air quality, (4) an update on the status of any action taken by other states regarding the use of ethanol as a gasoline additive, (5) recommendations for new ethanol exposure standards for gasoline-related occupations and for sensitive population subgroups, and (6) specific recommendations on alternative or supplemental air pollution reduction programs such as alternative motor vehicle fuel incentives, mass transit and employee commuter programs.





STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield *BW*  
Bureau Chief  
Bureau of Water Protection and Land Reuse

Dated: December 10, 2007

Re: 2007-1 Legislation and Regulations Advisory

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The 2006 Legislature amended section 8-7d of the general statutes with the passage of Section 1 of Public Act 06-80. This Public Act amended several subsections of 8-7d that went into effect on October 1, 2006.

As you are aware, the Inland Wetlands and Watercourses Act (IWWA) incorporates the timing provisions of section 8-7d by reference. Such section describes, among other things, time frames for processing applications by planning and zoning commissions and inland wetlands agencies. Public Act 06-80 amended subsection (a) of 8-7d which may affect certain inland wetlands agency regulations.

Subsection (a) of 8-7d authorizes that inland wetlands agencies may provide an additional notice of petitions, applications, requests, or appeals to persons who own land that is adjacent to the land that is the subject of the hearing. The amendment to subsection (a) specifies some of the requirements for such notice should the inland wetlands agency choose to include such additional notice. The relevant language reads as follows:

"...In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulation shall include provisions that the notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, and (2) the person who owns land shall be the owner indicated on the property tax map or on the last completed grand list as of the date such notice is mailed."

A complete copy of Public Act 06-80 is attached for your use with the revised language underlined. If your regulations provide for such notice, you should plan to revise your regulations to reflect the amendment to subsection (a) of 8-7d. Please note that only the revised language in subsection (a) of 8-7d is relevant to inland wetlands agencies. Changes to the other subsections of 8-7d, while noted and underline, do not apply to inland wetlands agencies.

2007-1 Legislation and Regulations Advisory  
December 10, 2007  
Page 2

If your regulations follow the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition dated May 1, 2006, you should plan to revise Appendix B of your regulations as such appendix contains section 8-7d of the general statutes. Attached for your use is a copy of a new Appendix B that contains the revised language of section 8-7d of the general statutes.

Please be reminded it is our understanding that the relevant portions of Section 1 of Public Act 06-80 govern until such time that your regulations are revised.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther or Steven F. Tessitore of the Wetlands Management Section at (860) 424-3019.



**Substitute House Bill No. 5290**

**Public Act No. 06-80**

**AN ACT CONCERNING NOTICE REQUIREMENTS FOR LAND USE APPLICATIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 8-7d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulations shall include provisions that the notice be mailed to persons who own [or occupy] land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, and (2) the person who owns land shall be the owner indicated on the property tax map or on the last-completed grand list as of the date such notice is mailed. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered within sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever the approval of

a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such site plan shall be rendered within sixty-five days after receipt of such site plan. Whenever a decision is to be made on an application for subdivision approval under chapter 126 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. Whenever a decision is to be made on an inland wetlands and watercourses application under chapter 440 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed sixty-five days or may withdraw such plan or application.

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.

(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning commission, planning commission or planning and zoning commission regarding adoption or change of any zoning regulation or boundary or any subdivision regulation.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(f) The zoning commission, planning commission, zoning and planning commission, zoning board of appeals or inland wetlands agency shall notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, appeal, request or plan.



(g) (1) Any zoning commission, planning commission or planning and zoning commission initiating any action regarding adoption or change of any zoning regulation or boundary or any subdivision regulation or regarding the preparation or amendment of the plan of conservation and development shall provide notice of such action in accordance with this subsection in addition to any other notice required under any provision of the general statutes.

(2) A zoning commission, planning commission or planning and zoning commission shall establish a public notice registry of landowners, electors and nonprofit organizations qualified as a tax-exempt organizations under the provisions of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, requesting notice under this subsection. Each municipality shall notify residents of such registry and the process for registering for notice under this subsection. The zoning commission, planning commission or planning and zoning commission shall place on such registry the names and addresses of any such landowner, elector or organization upon written request of such landowner, elector or organization. A landowner, elector or organization may request such notice be sent by mail or by electronic mail. The name and address of a landowner, elector or organization who requests to be placed on the public notice registry shall remain on such registry for a period of three years after the establishment of such registry. Thereafter any land owner, elector or organization may request to be placed on such registry for additional periods of three years.

(3) Any notice under this subsection shall be mailed to all landowners, electors and organizations in the public notice registry not later than seven days prior to the commencement of the public hearing on such action, if feasible. Such notice may be mailed by electronic mail if the zoning commission, planning commission or planning and zoning commission or the municipality has an electronic mail service provider.

(4) No zoning commission, planning commission or planning and zoning commission shall be civilly liable to any landowner, elector or nonprofit organization requesting notice under this subsection with respect to any act done or omitted in good faith or through a bona fide error that occurred despite reasonable procedures maintained by the zoning commission, planning commission or planning and zoning commission to prevent such errors in complying with the provisions of this section.

Sec. 2. Section 8-2m of the 2006 supplement to the general statutes is repealed. (*Effective from passage*)

Approved May 30, 2006

## APPENDIX B

### Connecticut General Statute section 8-7d

**Sec. 8-7d. Hearings and decisions. Time limits. Day of receipt. Notice to adjoining municipality. Public notice registry.** (a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulations shall include provisions that the notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, and (2) the person who owns land shall be the owner indicated on the property tax map or on the last-completed grand list as of the date such notice is mailed. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered within sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126 or chapter 440. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever the approval of a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such site plan shall be rendered within sixty-five days after receipt of such site plan. Whenever a decision is to be made on an application for subdivision approval under chapter 126 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. Whenever a decision is to be made on an inland wetlands and watercourses application under chapter 440 on which no hearing is held, such decision shall be rendered within sixty-five days after receipt of such application. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed sixty-five days or may withdraw such plan or application.

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.

(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning commission, planning commission or planning and zoning commission regarding adoption or change of any zoning regulation or boundary or any subdivision regulation.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(f) The zoning commission, planning commission, zoning and planning commission, zoning board of appeals or inland wetlands agency shall notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, appeal, request or plan.

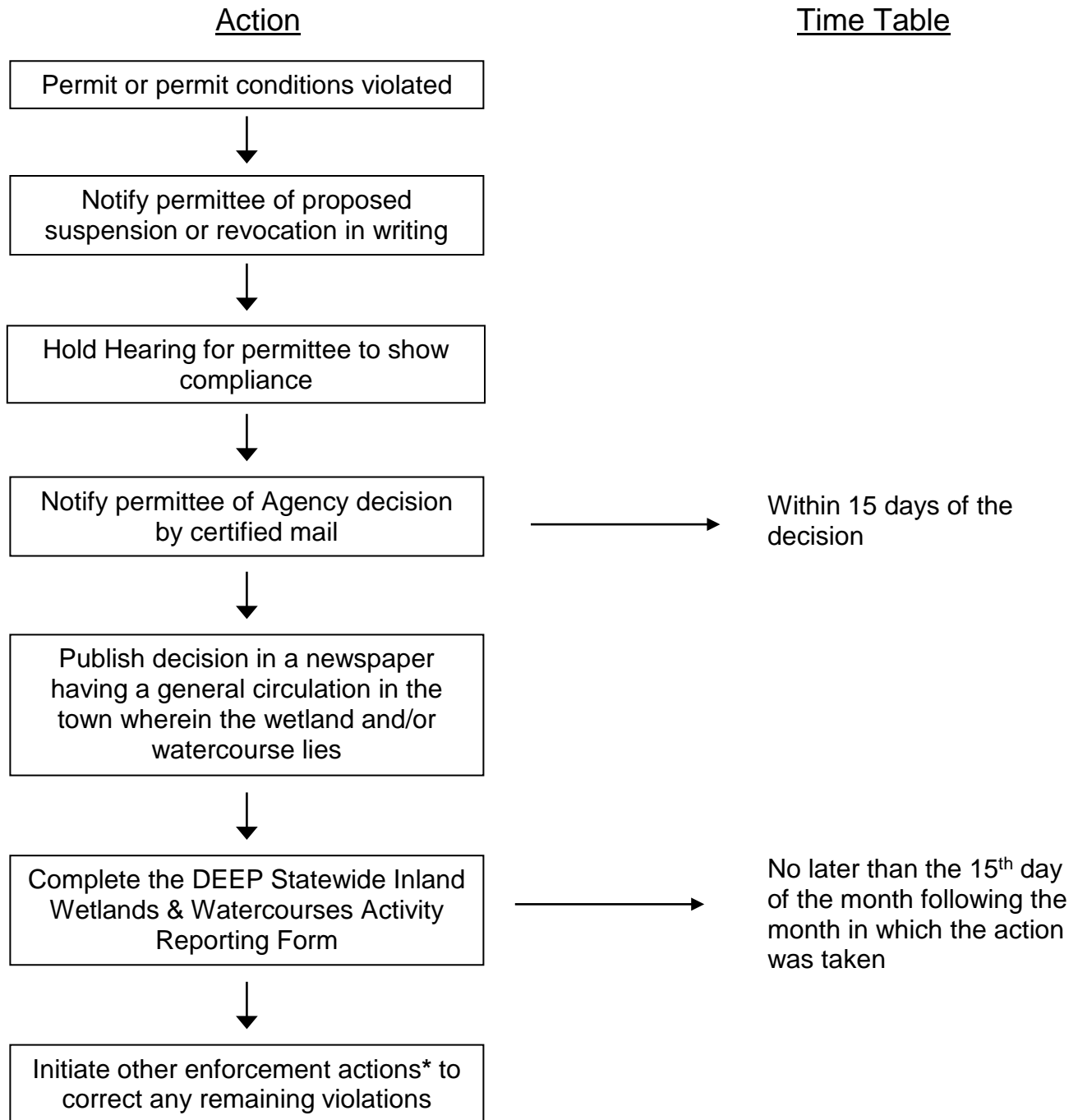
(g) (1) Any zoning commission, planning commission or planning and zoning commission initiating any action regarding adoption or change of any zoning regulation or boundary or any subdivision regulation or regarding the preparation or amendment of the plan of conservation and development shall provide notice of such action in accordance with this subsection in addition to any other notice required under any provision of the general statutes.

(2) A zoning commission, planning commission or planning and zoning commission shall establish a public notice registry of landowners, electors and nonprofit organizations qualified as tax-exempt organizations under the provisions of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, requesting notice under this subsection. Each municipality shall notify residents of such registry and the process for registering for notice under this subsection. The zoning commission, planning commission or planning and zoning commission shall place on such registry the names and addresses of any such landowner, elector or organization upon written request of such landowner, elector or organization. A landowner, elector or organization may request such notice be sent by mail or by electronic mail. The name and address of a landowner, elector or organization who requests to be placed on the public notice registry shall remain on such registry for a period of three years after the establishment of such registry. Thereafter any land owner, elector or organization may request to be placed on such registry for additional periods of three years.

(3) Any notice under this subsection shall be mailed to all landowners, electors and organizations in the public notice registry not later than seven days prior to the commencement of the public hearing on such action, if feasible. Such notice may be mailed by electronic mail if the zoning commission, planning commission or planning and zoning commission or the municipality has an electronic mail service provider.

(4) No zoning commission, planning commission or planning and zoning commission shall be civilly liable to any landowner, elector or nonprofit organization requesting notice under this subsection with respect to any act done or omitted in good faith or through a bona fide error that occurred despite reasonable procedures maintained by the zoning commission, planning commission or planning and zoning commission to prevent such errors in complying with the provisions of this section.

## PERMIT REVOCATION FLOW CHART (CGS Sec. 22a-42a(d)(1))



\* For work in and/or around wetlands and watercourses that is impacting or affecting such wetlands and watercourses and is exceeding the scope of a permit, additional enforcement action (e.g., an order, see "Enforcement Flow Chart") may be initiated concurrently.

## Jennifer Lindo

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**From:** Hollister, Timothy <THollister@goodwin.com>  
**Sent:** Monday, July 13, 2020 11:50 AM  
**To:** Gary Goeschel; Jennifer Lindo  
**Cc:** 'Glenn Russo'  
**Subject:** FW: Copier 18N  
**Attachments:** 0713209453.pdf

Gary and Jennifer - attached is a letter to the Inland Wetlands Agency which I ask be read aloud into the record at tonight's hearing, thanks. Please confirm receipt of this email



**Timothy S. Hollister**  
**Phone: (860) 251-5748**  
**Fax: (860) 251-5318**  
**thollister@goodwin.com**

July 13, 2020

Via email to Gary Goeschel, Wetlands Enforcement Officer  
ggoeschel@eltownhall.com

Gary Upton, Chair, and Members  
Town of East Lyme Inland Wetlands Agency  
East Lyme Town Hall  
PO Box 519  
East Lyme, Ct 06357-1510

To the East Lyme Inland Wetlands Agency:

We represent Landmark Development Group and Jarvis of Cheshire, owners of 236 acres adjacent to Calkins Road. As you know, Landmark has been pursuing development of its property for many years. We are writing to strenuously object to the Agency's proposal to extend its wetlands upland review area to 500 feet from wetlands and watercourses.

This proposal is illegal and invalid for several reasons. First, there is simply no statutory authority for such a review area. The Agency's statutory jurisdiction is limited to wetlands and watercourses. Upland review areas, by definition, *are non-wetlands*. Upland review areas are allowed at limited distances to allow for evaluation of potential impacts of construction on wetlands and watercourse. A 500 foot review area would bring under the Agencies review lands that have no conceivable geographic and hydraulic connection to wetland or watercourse impact. In addition, the proposal would result in enormous and unnecessary cost to applicants, who would be required to conduct soils and other investigations in non-wetlands, even if no impact on a wetlands or watercourse was possible.

Second, the 500 limit is unnecessary. It is well established that if a proposal calls for construction upgradient from a wetland or watercourse, the agency may ask for evidence that there will be no substantial adverse impact, regardless of the distance.

Third, such review area will violate the holding of the Connecticut Supreme Court in *Tilcon, Connecticut vs Commissioner of Environmental Protection*, a 2015 decision.


Gary Goeschel  
July 13, 2020  
Page 2

Though that case dealt with water diversion regulation and permits, the issue was identical to East Lyme's proposal. The court's own description of that case states that the Court invalidated DEEP's attempt to use its authority to regulate water diversions to demand studies of all environmental resources on the property of an applicant for a water diversion permit, even though a large percentage of those resources were "hydraulically unrelated to the proposed water diversions for which [Tilcon] requested permits."

Finally, the 500 foot proposal is plainly inconsistent with DEEP's model wetland regulations for local agencies, which although not binding state regulations, represent DEEP's guidance as the limits of local wetlands authority.

If this regulation is adopted, Landmark will join other parties in appealing it, and we are certain that a court will invalidate it. The Agency would be well advised, legal and financially, to not adopt this regulation.

Very truly yours,



Timothy S Hollister

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